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HISTORICAL NOTE

This chapter includes among other statutory provisions the Sherman Act, comprising sections 1 to 7 of this title, the Clayton Act, comprising sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and sections 52 and 53 of Title 29, Labor, the Wilson Tariff Act, comprising sections 8 and 9 of this title, the Robinson-Patman Price Discrimination Act, comprising sections 13, 13a, 13b, and 21a of this title, the "Expediting Act", sections 28 and 29 of this title, and the "Hart-Scott-Rodino Antitrust Improvements Act of 1976", comprising sections 15c to 15h, 18a, and 66 of this title. For complete classification of the Hart-Scott-Rodino Act, see Short Title note under section 1 of this title.

CONGRESSIONAL INVESTIGATION OF MONOPOLY

Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, created a Temporary National Economic Committee which was authorized to make a full investigation on monopoly and the concentration of economic power in and financial control over production and distribution of goods and services. The time for submitting the final report

under Joint Res. June 16, 1938, ch. 456, 52 Stat. 705, as amended Apr. 26, 1939, ch. 104, §§1, 2, 53 Stat. 624, was extended to Apr. 3, 1941, by Joint Res. Dec. 16, 1940, ch. 932, 54 Stat. 1225. The committee's report was presented to Congress on Mar. 31, 1941, and was published in Senate Document No. 35.

EXECUTIVE ORDER NO. 12022

Ex. Ord. No. 12022, Dec. 1, 1977, 42 F.R. 61441, as amended by Ex. Ord. No. 12052, Apr. 7, 1978, 43 F.R. 15133, which related to the National Commission for the Review of Antitrust Laws and Procedures, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

ANTITRUST ACTS AND LAWS DEFINED IN OTHER SECTIONS

Antitrust acts and laws are defined in sections 12, 44, 1311, 1802, 3301, 3503, 4002, 4021, 4301, 6211 of this title; title 10 section 7430; title 12 sections 1828, 1831u, 1841, 1849; title 16 section 2602; title 17 section 109; title 28 section 1407; title 30 sections 184, 1413; title 33 section 1502; title 40 section 559; title 42 sections 5417, 5909, 6202, 8235f, 9102; title 43 sections 1331, 1770; title 45 section 791; title 46 App. section 1702; title 49 sections 10706, 41308; title 50 App. sections 1941a, 2158.

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, §1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93-528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 94-145, §2, Dec. 12, 1975, 89 Stat. 801; Pub. L. 101-588, §4(a), Nov. 16, 1990, 104 Stat. 2880.)

AMENDMENTS

1990—Pub. L. 101-588 substituted “\$10,000,000” for “one million dollars” and “\$350,000” for “one hundred thousand dollars”.

1975—Pub. L. 94-145 struck out from first sentence two provisos granting anti-trust exemption to State fair trade laws.

1974—Pub. L. 93-528 substituted “a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years” for “a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year”.

1955—Act July 7, 1955, substituted “fifty thousand dollars” for “five thousand dollars”.

1937—Act Aug. 17, 1937, inserted two provisos.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-72, §4, Nov. 20, 2001, 115 Stat. 650, provided that: “This Act [enacting and amending provisions set out as notes under this section] and the amendments made by this Act shall take effect on September 30, 2001.”

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4 of Pub. L. 94-145 provided that: “The amendments made by sections 2 and 3 of this Act

[amending this section and section 45 of this title] shall take effect upon the expiration of the ninety-day period which begins on the date of enactment of this Act [Dec. 12, 1975].”

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107-273, div. C, title IV, §14101, Nov. 2, 2002, 116 Stat. 1921, provided that: “This title [amending sections 3, 12, 27, and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing sections 30 and 31 of this title, enacting provisions set out as a note under section 3 of this title, amending provisions set out as notes under this section and section 8 of this title, and repealing provisions set out as notes under section 15 of this title and section 41309 of Title 49, Transportation] may be cited as the ‘Antitrust Technical Corrections Act of 2002’.”

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107-72, §1, Nov. 20, 2001, 115 Stat. 648, provided that: “This Act [enacting and amending provisions set out as notes under this section] may be cited as the ‘Need-Based Educational Aid Act of 2001’.”

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105-297, §1, Oct. 27, 1998, 112 Stat. 2824, provided that: “This Act [enacting section 26b of this title and provisions set out as a note under section 26b of this title] may be cited as the ‘Curt Flood Act of 1998’.”

SHORT TITLE OF 1997 AMENDMENTS

Pub. L. 105-43, §1, Sept. 17, 1997, 111 Stat. 1140, provided that: “This Act [enacting and amending provisions set out as notes below] may be cited as the ‘Need-Based Educational Aid Antitrust Protection Act of 1997’.”

Pub. L. 105-26, §1, July 3, 1997, 111 Stat. 241, provided that: “This Act [amending sections 37 and 37a of this title and enacting provisions set out as notes under section 37 of this title] may be cited as the ‘Charitable Donation Antitrust Immunity Act of 1997’.”

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104-63, §1, Dec. 8, 1995, 109 Stat. 687, provided that: “This Act [enacting sections 37 and 37a of this title and provisions set out as a note under section 37 of this title] may be cited as the ‘Charitable Gift Annuity Antitrust Relief Act of 1995’.”

SHORT TITLE OF 1990 AMENDMENT

Section 1 of Pub. L. 101-588 provided: “That this Act [amending this section and sections 2, 3, 15a, and 19 of this title and repealing section 20 of this title] may be cited as the ‘Antitrust Amendments Act of 1990’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-544, §1, Oct. 24, 1984, 98 Stat. 2750, provided: “That this Act [enacting sections 34 to 36 of this title and provisions set out as a note under section 34 of this title] may be cited as the ‘Local Government Antitrust Act of 1984’.”

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97-290, title IV, §401, Oct. 8, 1982, 96 Stat. 1246, provided that: “This title [enacting section 6a of this title and amending section 45 of this title] may be cited as the ‘Foreign Trade Antitrust Improvements Act of 1982’.”

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96-493, §1, Dec. 2, 1980, 94 Stat. 2568, provided: “That this Act [enacting section 26a of this title] may be cited as the ‘Gasohol Competition Act of 1980’.”

SHORT TITLE OF 1976 AMENDMENT

Section 1 of Pub. L. 94-435, Sept. 30, 1976, 90 Stat. 1383, provided: “That this Act [enacting sections 15c to 15h,

18a, and 66 of this title, amending sections 12, 15b, 16, 26, and 1311 to 1314 of this title, section 1505 of Title 18, Crimes and Criminal Procedure, and section 1407 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 8, 15c, 18a, and 1311 of this title] may be cited as the ‘Hart-Scott-Rodino Antitrust Improvements Act of 1976.’”

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94-145 provided: “That this Act [amending this section and section 45 of this title and enacting provisions set out as a note under this section] may be cited as the ‘Consumer Goods Pricing Act of 1975.’”

SHORT TITLE OF 1974 AMENDMENT

Section 1 of Pub. L. 93-528 provided: “That this Act [amending this section and section 2, 3, 16, 28, and 29 of this title, section 401 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and sections 43, 44, and 45 of former Title 49, Transportation, and enacting provisions set out as notes under this section and section 29 of this title] may be cited as the ‘Antitrust Procedures and Penalties Act.’”

SHORT TITLE

Pub. L. 94-435, title III, §305(a), Sept. 30, 1976, 90 Stat. 1397, added immediately following the enacting clause of act July 2, 1890, the following: “That this Act [this section and sections 2 to 7 of this title] may be cited as the ‘Sherman Act.’”

ANTITRUST MODERNIZATION COMMISSION

Pub. L. 107-273, div. C, title I, subtitle D, Nov. 2, 2002, 116 Stat. 1856, provided that:

“SEC. 11051. SHORT TITLE.

“This subtitle may be cited as the ‘Antitrust Modernization Commission Act of 2002’.

“SEC. 11052. ESTABLISHMENT.

“There is established the Antitrust Modernization Commission (in this subtitle referred to as the ‘Commission’).

“SEC. 11053. DUTIES OF THE COMMISSION.

“The duties of the Commission are—

“(1) to examine whether the need exists to modernize the antitrust laws and to identify and study related issues;

“(2) to solicit views of all parties concerned with the operation of the antitrust laws;

“(3) to evaluate the advisability of proposals and current arrangements with respect to any issues so identified; and

“(4) to prepare and to submit to Congress and the President a report in accordance with section 11058.

“SEC. 11054. MEMBERSHIP.

“(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed as follows:

“(1) Four members, no more than 2 of whom shall be of the same political party, shall be appointed by the President. The President shall appoint members of the opposing party only on the recommendation of the leaders of Congress from that party.

“(2) Two members shall be appointed by the majority leader of the Senate.

“(3) Two members shall be appointed by the minority leader of the Senate.

“(4) Two members shall be appointed by the Speaker of the House of Representatives.

“(5) Two members shall be appointed by the minority leader of the House of Representatives.

“(b) INELIGIBILITY FOR APPOINTMENT.—Members of Congress shall be ineligible for appointment to the Commission.

“(c) TERM OF APPOINTMENT.—

“(1) IN GENERAL.—Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.

“(2) EARLY TERMINATION OF APPOINTMENT.—If a member of the Commission who is appointed to the Commission as—

“(A) an officer or employee of a government ceases to be an officer or employee of such government; or

“(B) an individual who is not an officer or employee of a government becomes an officer or employee of a government;

then such member shall cease to be a member of the Commission on the expiration of the 90-day period beginning on the date such member ceases to be such officer or employee of such government, or becomes an officer or employee of a government, as the case may be.

“(d) QUORUM.—Seven members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

“(e) APPOINTMENT DEADLINE.—Initial appointments under subsection (a) shall be made not later than 60 days after the date of enactment of this Act [Nov. 2, 2002].

“(f) MEETINGS.—The Commission shall meet at the call of the chairperson. The first meeting of the Commission shall be held not later than 30 days after the date on which all members of the Commission are first appointed under subsection (a) or funds are appropriated to carry out this subtitle, whichever occurs later.

“(g) VACANCY.—A vacancy on the Commission shall be filled in the same manner as the initial appointment is made.

“(h) CONSULTATION BEFORE APPOINTMENT.—Before appointing members of the Commission, the President, the majority and minority leaders of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives shall consult with each other to ensure fair and equitable representation of various points of view in the Commission.

“(i) CHAIRPERSON; VICE CHAIRPERSON.—The President shall select the chairperson of the Commission from among its appointed members. The leaders of Congress from the opposing party of the President shall select the vice chairperson of the Commission from among its remaining members.

“SEC. 11055. COMPENSATION OF THE COMMISSION.

“(a) PAY.—

“(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by a government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

“(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of a government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Commission.

“(b) TRAVEL EXPENSES.—Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

“SEC. 11056. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

“(a) STAFF.—

“(1) APPOINTMENT.—The chairperson of the Commission may, without regard to the provisions of chapter 51 of title 5 of the United States Code (relating to appointments in the competitive service), appoint and terminate an executive director and such other staff as are necessary to enable the Commission to perform its duties. The appointment of an executive director shall be subject to approval by the Commission.

“(2) COMPENSATION.—The chairperson of the Commission may fix the compensation of the executive

director and other staff without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code (relating to classification of positions and General Schedule pay rates), except that the rate of pay for the executive director and other staff may not exceed the rate of basic pay payable for level V of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time.

“(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants in accordance with section 3109(b) of title 5, United States Code.

“SEC. 11057. POWERS OF THE COMMISSION.

“(a) HEARINGS AND MEETINGS.—The Commission, or a member of the Commission if authorized by the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers to be appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or such member.

“(b) OFFICIAL DATA.—The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court information necessary to enable it to carry out its duties under this subtitle. On the request of the chairperson of the Commission, and consistent with any other law, the head of an executive agency or of a Federal court shall provide such information to the Commission.

“(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. On request of the Commission, the head of an executive agency may make any of the facilities or services of such agency available to the Commission, on a reimbursable or nonreimbursable basis, to assist the Commission in carrying out its duties under this subtitle.

“(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or such member considers to be appropriate for the purpose of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in advance in appropriation Acts.

“(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

“(f) GIFTS, BEQUESTS, AND DEVISES.—The Commission may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon order of the Commission.

“SEC. 11058. REPORT.

“Not later than 3 years after the first meeting of the Commission, the Commission shall submit to Congress and the President a report containing a detailed statement of the findings and conclusions of the Commission, together with recommendations for legislative or administrative action the Commission considers to be appropriate.

“SEC. 11059. TERMINATION OF COMMISSION.

“The Commission shall cease to exist 30 days after the date on which the report required by section 8 [11058] is submitted.

“SEC. 11060. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated \$4,000,000 to carry out this subtitle.”

YEAR 2000 INFORMATION AND READINESS DISCLOSURE

Pub. L. 105-271, Oct. 19, 1998, 112 Stat. 2386, as amended by Pub. L. 107-273, div. C, title IV, § 14102(e), Nov. 2, 2002, 116 Stat. 1922, provided that:

“SECTION 1. SHORT TITLE.

“This Act may be cited as the ‘Year 2000 Information and Readiness Disclosure Act’.

“SEC. 2. FINDINGS AND PURPOSES.

“(a) FINDINGS.—Congress finds the following:

“(1)(A) At least thousands but possibly millions of information technology computer systems, software programs, and semiconductors are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process those dates.

“(B) The problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, government, and safety and defense systems, in the United States and throughout the world.

“(C) Reprogramming or replacing affected systems before the problem incapacitates essential systems is a matter of national and global interest.

“(2) The prompt, candid, and thorough disclosure and exchange of information related to year 2000 readiness of entities, products, and services—

“(A) would greatly enhance the ability of public and private entities to improve their year 2000 readiness; and

“(B) is therefore a matter of national importance and a vital factor in minimizing any potential year 2000 related disruption to the Nation’s economic well-being and security.

“(3) Concern about the potential for legal liability associated with the disclosure and exchange of year 2000 readiness information is impeding the disclosure and exchange of such information.

“(4) The capability to freely disseminate and exchange information relating to year 2000 readiness, solutions, test practices and test results, with the public and other entities without undue concern about litigation is critical to the ability of public and private entities to address year 2000 needs in a timely manner.

“(5) The national interest will be served by uniform legal standards in connection with the disclosure and exchange of year 2000 readiness information that will promote disclosures and exchanges of such information in a timely fashion.

“(b) PURPOSES.—Based upon the powers contained in article I, section 8, clause 3 of the Constitution of the United States, the purposes of this Act are—

“(1) to promote the free disclosure and exchange of information related to year 2000 readiness;

“(2) to assist consumers, small businesses, and local governments in effectively and rapidly responding to year 2000 problems; and

“(3) to lessen burdens on interstate commerce by establishing certain uniform legal principles in connection with the disclosure and exchange of information related to year 2000 readiness.

“SEC. 3. DEFINITIONS.

“In this Act:

“(1) ANTITRUST LAWS.—The term ‘antitrust laws’—

“(A) has the meaning given to it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

“(B) includes any State law similar to the laws referred to in subparagraph (A).

“(2) CONSUMER.—The term ‘consumer’ means an individual who acquires a consumer product for purposes other than resale.

“(3) CONSUMER PRODUCT.—The term ‘consumer product’ means any personal property or service which is normally used for personal, family, or household purposes.

“(4) COVERED ACTION.—The term ‘covered action’ means a civil action of any kind, whether arising under Federal or State law, except for an action brought by a Federal, State, or other public entity, agency, or authority acting in a regulatory, supervisory, or enforcement capacity.

“(5) MAKER.—The term ‘maker’ means each person or entity, including the United States or a State or political subdivision thereof, that—

“(A) issues or publishes any year 2000 statement;

“(B) develops or prepares any year 2000 statement; or

“(C) assists in, contributes to, or reviews, reports or comments on during, or approves, or otherwise takes part in the preparing, developing, issuing, approving, or publishing of any year 2000 statement.

“(6) REPUBLICATION.—The term ‘republishing’ means any repetition, in whole or in part, of a year 2000 statement originally made by another.

“(7) YEAR 2000 INTERNET WEBSITE.—The term ‘year 2000 Internet website’ means an Internet website or other similar electronically accessible service, clearly designated on the website or service by the person or entity creating or controlling the content of the website or service as an area where year 2000 statements concerning that person or entity are posted or otherwise made accessible to the general public.

“(8) YEAR 2000 PROCESSING.—The term ‘year 2000 processing’ means the processing (including calculating, comparing, sequencing, displaying, or storing), transmitting, or receiving of date data from, into, and between the 20th and 21st centuries, and during the years 1999 and 2000, and leap year calculations.

“(9) YEAR 2000 READINESS DISCLOSURE.—The term ‘year 2000 readiness disclosure’ means any written year 2000 statement—

“(A) clearly identified on its face as a year 2000 readiness disclosure;

“(B) inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form; and

“(C) issued or published by or with the approval of a person or entity with respect to year 2000 processing of that person or entity or of products or services offered by that person or entity.

“(10) YEAR 2000 REMEDIATION PRODUCT OR SERVICE.—The term ‘year 2000 remediation product or service’ means a software program or service licensed, sold, or rendered by a person or entity and specifically designed to detect or correct year 2000 processing problems with respect to systems, products, or services manufactured or rendered by another person or entity.

“(11) YEAR 2000 STATEMENT.—

“(A) IN GENERAL.—The term ‘year 2000 statement’ means any communication or other conveyance of information by a party to another or to the public, in any form or medium—

“(i) concerning an assessment, projection, or estimate concerning year 2000 processing capabilities of an entity, product, service, or set of products and services;

“(ii) concerning plans, objectives, or timetables for implementing or verifying the year 2000 processing capabilities of an entity, product, service, or set of products and services;

“(iii) concerning test plans, test dates, test results, or operational problems or solutions related to year 2000 processing by—

“(I) products; or

“(II) services that incorporate or utilize products; or

“(iv) reviewing, commenting on, or otherwise directly or indirectly relating to year 2000 processing capabilities.

“(B) NOT INCLUDED.—For the purposes of any action brought under the securities laws, as that term

is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the term ‘year 2000 statement’ does not include statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(i) [781(i)]), or disclosures or writing that when made accompanied the solicitation of an offer or sale of securities.

“SEC. 4. PROTECTION FOR YEAR 2000 STATEMENTS.

“(a) EVIDENCE EXCLUSION.—No year 2000 readiness disclosure, in whole or in part, shall be admissible against the maker of that disclosure to prove the accuracy or truth of any year 2000 statement set forth in that disclosure, in any covered action brought by another party except that—

“(1) a year 2000 readiness disclosure may be admissible to serve as the basis for a claim for anticipatory breach, or repudiation of a contract, or a similar claim against the maker, to the extent provided by applicable law; and

“(2) the court in any covered action shall have discretion to limit application of this subsection in any case in which the court determines that the maker’s use of the year 2000 readiness disclosure amounts to bad faith or fraud, or is otherwise beyond what is reasonable to achieve the purposes of this Act.

“(b) FALSE, MISLEADING AND INACCURATE YEAR 2000 STATEMENTS.—Except as provided in subsection (c), in any covered action, to the extent that such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable under Federal or State law with respect to that year 2000 statement unless the claimant establishes, in addition to all other requisite elements of the applicable action, by clear and convincing evidence, that—

“(1) the year 2000 statement was material; and

“(2)(A) to the extent the year 2000 statement was not a republication, that the maker made the year 2000 statement—

“(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

“(ii) with intent to deceive or mislead; or

“(iii) with a reckless disregard as to the accuracy of the year 2000 statement; or

“(B) to the extent the year 2000 statement was a republication, that the maker of the republication made the year 2000 statement—

“(i) with actual knowledge that the year 2000 statement was false, inaccurate, or misleading;

“(ii) with intent to deceive or mislead; or

“(iii) without notice in that year 2000 statement that—

“(I) the maker has not verified the contents of the republication; or

“(II) the maker is not the source of the republication and the republication is based on information supplied by another person or entity identified in that year 2000 statement or republication.

“(c) DEFAMATION OR SIMILAR CLAIMS.—In a covered action arising under any Federal or State law of defamation, trade disparagement, or a similar claim, to the extent such action is based on an allegedly false, inaccurate, or misleading year 2000 statement, the maker of that year 2000 statement shall not be liable with respect to that year 2000 statement, unless the claimant establishes by clear and convincing evidence, in addition to all other requisite elements of the applicable action, that the year 2000 statement was made with knowledge that the year 2000 statement was false or made with reckless disregard as to its truth or falsity.

“(d) YEAR 2000 INTERNET WEBSITE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), in any covered action other than a covered action involving personal injury or serious physical damage to property, in which the adequacy of notice about

year 2000 processing is at issue, the posting, in a commercially reasonable manner and for a commercially reasonable duration, of a notice by the entity charged with giving such notice on the year 2000 Internet website of that entity shall be deemed an adequate mechanism for providing that notice.

“(2) EXCEPTION.—Paragraph (1) shall not apply if the court finds that the use of the mechanism of notice—

“(A) is contrary to express prior representations regarding the mechanism of notice made by the party giving notice;

“(B) is materially inconsistent with the regular course of dealing between the parties; or

“(C) occurs where there have been no prior representations regarding the mechanism of notice, no regular course of dealing exists between the parties, and actual notice is clearly the most commercially reasonable means of providing notice.

“(3) CONSTRUCTION.—Nothing in this subsection shall—

“(A) alter or amend any Federal or State statute or regulation requiring that notice about year 2000 processing be provided using a different mechanism;

“(B) create a duty to provide notice about year 2000 processing;

“(C) preclude or suggest the use of any other medium for notice about year 2000 processing or require the use of an Internet website; or

“(D) mandate the content or timing of any notices about year 2000 processing.

“(e) LIMITATION ON EFFECT OF YEAR 2000 STATEMENTS.—

“(1) IN GENERAL.—In any covered action, a year 2000 statement shall not be interpreted or construed as an amendment to or alteration of a contract or warranty, whether entered into by or approved for a public or private entity.

“(2) NOT APPLICABLE.—

“(A) IN GENERAL.—This subsection shall not apply—

“(i) to the extent the party whose year 2000 statement is alleged to have amended or altered a contract or warranty has otherwise agreed in writing to so alter or amend the contract or warranty;

“(ii) to a year 2000 statement made in conjunction with the formation of the contract or warranty; or

“(iii) if the contract or warranty specifically provides for its amendment or alteration through the making of a year 2000 statement.

“(B) RULE OF CONSTRUCTION.—Nothing in this subsection shall affect applicable Federal or State law in effect as of the date of enactment of this Act [Oct. 19, 1998] with respect to determining the extent to which a year 2000 statement affects a contract or warranty.

“(f) SPECIAL DATA GATHERING.—

“(1) IN GENERAL.—A Federal entity, agency, or authority may expressly designate a request for the voluntary provision of information relating to year 2000 processing, including year 2000 statements, as a special year 2000 data gathering request made pursuant to this subsection.

“(2) SPECIFICS.—A special year 2000 data gathering request made under this subsection shall specify a Federal entity, agency, or authority, or, with its consent, another public or private entity, agency, or authority, to gather responses to the request.

“(3) PROTECTIONS.—Except with the express consent or permission of the provider of information described in paragraph (1), any year 2000 statements or other such information provided by a party in response to a special year 2000 data gathering request made under this subsection—

“(A) shall be exempt from disclosure under subsection (b)(4) of section 552 of title 5, United States Code, commonly known as the ‘Freedom of Information Act’;

“(B) shall not be disclosed to any third party; and

“(C) may not be used by any Federal entity, agency, or authority or by any third party, directly or indirectly, in any civil action arising under any Federal or State law.

“(4) EXCEPTIONS.—

“(A) INFORMATION OBTAINED ELSEWHERE.—Nothing in this subsection shall preclude a Federal entity, agency, or authority, or any third party, from separately obtaining the information submitted in response to a request under this subsection through the use of independent legal authorities, and using such separately obtained information in any action.

“(B) VOLUNTARY DISCLOSURE.—A restriction on use or disclosure of information under this subsection shall not apply to any information disclosed to the public with the express consent of the party responding to a special year 2000 data gathering request or disclosed by such party separately from a response to a special year 2000 data gathering request.

“SEC. 5. TEMPORARY ANTITRUST EXEMPTION.

“(a) EXEMPTION.—Except as provided in subsection (b), the antitrust laws shall not apply to conduct engaged in, including making and implementing an agreement, solely for the purpose of and limited to—

“(1) facilitating responses intended to correct or avoid a failure of year 2000 processing in a computer system, in a component of a computer system, in a computer program or software, or services utilizing any such system, component, program, or hardware; or

“(2) communicating or disclosing information to help correct or avoid the effects of year 2000 processing failure.

“(b) APPLICABILITY.—Subsection (a) shall apply only to conduct that occurs, or an agreement that is made and implemented, after the date of enactment of this Act [Oct. 19, 1998] and before July 14, 2001.

“(c) EXCEPTION TO EXEMPTION.—Subsection (a) shall not apply with respect to conduct that involves or results in an agreement to boycott any person, to allocate a market, or to fix prices or output.

“(d) RULE OF CONSTRUCTION.—The exemption granted by this section shall be construed narrowly.

“SEC. 6. EXCLUSIONS.

“(a) EFFECT ON INFORMATION DISCLOSURE.—This Act does not affect, abrogate, amend, or alter the authority of a Federal or State entity, agency, or authority to enforce a requirement to provide or disclose, or not to provide or disclose, information under a Federal or State statute or regulation or to enforce such statute or regulation.

“(b) CONTRACTS AND OTHER CLAIMS.—

“(1) IN GENERAL.—Except as may be otherwise provided in subsections (a) and (e) of section 4, this Act does not affect, abrogate, amend, or alter any right established by contract or tariff between any person or entity, whether entered into by a public or private person or entity, under any Federal or State law.

“(2) OTHER CLAIMS.—

“(A) IN GENERAL.—In any covered action brought by a consumer, this Act does not apply to a year 2000 statement expressly made in a solicitation, including an advertisement or offer to sell, to that consumer by a seller, manufacturer, or provider of a consumer product.

“(B) SPECIFIC NOTICE REQUIRED.—In any covered action, this Act shall not apply to a year 2000 statement, concerning a year 2000 remediation product or service, expressly made in an offer to sell or in a solicitation (including an advertisement) by a seller, manufacturer, or provider, of that product or service unless, during the course of the offer or solicitation, the party making the offer or solicitation provides the following notice in accordance with section 4(d):

“‘Statements made to you in the course of this sale are subject to the Year 2000 Information and

Readiness Disclosure Act (____ U.S.C. ____). In the case of a dispute, this Act may reduce your legal rights regarding the use of any such statements, unless otherwise specified by your contract or tariff.

“(3) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to preclude any claims that are not based exclusively on year 2000 statements.

“(c) DUTY OR STANDARD OF CARE.—

“(1) IN GENERAL.—This Act shall not impose upon the maker of any year 2000 statement any more stringent obligation, duty, or standard of care than is otherwise applicable under any other Federal law or State law.

“(2) ADDITIONAL DISCLOSURE.—This Act does not preclude any party from making or providing any additional disclosure, disclaimer, or similar provisions in connection with any year 2000 readiness disclosure or year 2000 statement.

“(3) DUTY OF CARE.—This Act shall not be deemed to alter any standard or duty of care owed by a fiduciary, as defined or determined by applicable Federal or State law.

“(d) INTELLECTUAL PROPERTY RIGHTS.—This Act does not affect, abrogate, amend, or alter any right in a patent, copyright, semiconductor mask work, trade secret, trade name, trademark, or service mark, under any Federal or State law.

“(e) INJUNCTIVE RELIEF.—Nothing in this Act shall be deemed to preclude a claimant from seeking injunctive relief with respect to a year 2000 statement.

“SEC. 7. APPLICABILITY.

“(a) EFFECTIVE DATE.—

“(1) IN GENERAL.—Except as otherwise provided in this section, this Act shall become effective on the date of enactment of this Act [Oct. 19, 1998].

“(2) APPLICATION TO LAWSUITS PENDING.—This Act shall not affect or apply to any lawsuit pending on July 14, 1998.

“(3) APPLICATION TO STATEMENTS AND DISCLOSURES.—Except as provided in subsection (b)—

“(A) this Act shall apply to any year 2000 statement made beginning on July 14, 1998 and ending on July 14, 2001; and

“(B) this Act shall apply to any year 2000 readiness disclosure made beginning on the date of enactment of this Act and ending on July 14, 2001.

“(b) PREVIOUSLY MADE READINESS DISCLOSURE.—

“(1) IN GENERAL.—For the purposes of section 4(a), a person or entity that issued or published a year 2000 statement after January 1, 1996, and before the date of enactment of this Act [Oct. 19, 1998], may designate that year 2000 statement as a year 2000 readiness disclosure if—

“(A) the year 2000 statement complied with the requirements of section 3(9) when made, other than being clearly designated on its face as a disclosure; and

“(B) within 45 days after the date of enactment of this Act, the person or entity seeking the designation—

“(i) provides individual notice that meets the requirements of paragraph (2) to all recipients of the applicable year 2000 statement; or

“(ii) prominently posts notice that meets the requirements of paragraph (2) on its year 2000 Internet website, commencing prior to the end of the 45-day period under this subparagraph and extending for a minimum of 45 consecutive days and also uses the same method of notification used to originally provide the applicable year 2000 statement.

“(2) REQUIREMENTS.—A notice under paragraph (1)(B) shall—

“(A) state that the year 2000 statement that is the subject of the notice is being designated a year 2000 readiness disclosure; and

“(B) include a copy of the year 2000 statement with a legend labeling the statement as a ‘Year 2000 Readiness Disclosure’.

“(c) EXCEPTION.—No designation of a year 2000 statement as a year 2000 readiness disclosure under subsection (b) shall apply with respect to any person or entity that—

“(1) proves, by clear and convincing evidence, that it relied on the year 2000 statement prior to the receipt of notice described in subsection (b)(1)(B) and it would be prejudiced by the retroactive designation of the year 2000 statement as a year 2000 readiness disclosure; and

“(2) provides to the person or entity seeking the designation a written notice objecting to the designation within 45 days after receipt of individual notice under subsection (b)(1)(B)(i), or within 180 days after the date of enactment of this Act [Oct. 19, 1998], in the case of notice provided under subsection (b)(1)(B)(ii).

“SEC. 8. YEAR 2000 COUNCIL WORKING GROUPS.

“(a) IN GENERAL.—

“(1) WORKING GROUPS.—The President’s Year 2000 Council (referred to in this section as the ‘Council’) may establish and terminate working groups composed of Federal employees who will engage outside organizations in discussions to address the year 2000 problems identified in section 2(a)(1) to share information related to year 2000 readiness, and otherwise to serve the purposes of this Act.

“(2) LIST OF GROUPS.—The Council shall maintain and make available to the public a printed and electronic list of the working groups, the members of each working group, and a point of contact, together with an address, telephone number, and electronic mail address for the point of contact, for each working group created under this section.

“(3) BALANCE.—The Council shall seek to achieve a balance of participation and representation among the working groups.

“(4) ATTENDANCE.—The Council shall maintain and make available to the public a printed and electronic list of working group members who attend each meeting of a working group as well as any other individuals or organizations participating in each meeting.

“(5) MEETINGS.—Each meeting of a working group shall be announced in advance in accordance with procedures established by the Council. The Council shall encourage working groups to hold meetings open to the public to the extent feasible and consistent with the activities of the Council and the purposes of this Act.

“(b) FACILITY.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the working groups established under this section.

“(c) PRIVATE RIGHT OF ACTION.—This section creates no private right of action to sue for enforcement of the provisions of this section.

“(d) EXPIRATION.—The authority conferred by this section shall expire on December 31, 2000.

“SEC. 9. NATIONAL INFORMATION CLEARINGHOUSE AND WEBSITE.

“(a) NATIONAL WEBSITE.—

“(1) IN GENERAL.—The Administrator of General Services shall create and maintain until July 14, 2002, a national year 2000 website, and promote its availability, designed to assist consumers, small business, and local governments in obtaining information from other governmental websites, hotlines, or information clearinghouses about year 2000 processing of computers, systems, products, and services, including websites maintained by independent agencies and other departments.

“(2) CONSULTATION.—In creating the national year 2000 website, the Administrator of General Services shall consult with—

“(A) the Director of the Office of Management and Budget;

“(B) the Administrator of the Small Business Administration;

“(C) the Consumer Product Safety Commission;

“(D) officials of State and local governments;

“(E) the Director of the National Institute of Standards and Technology;

“(F) representatives of consumer and industry groups; and

“(G) representatives of other entities, as determined appropriate.

“(b) REPORT.—The Administrator of General Services shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives and the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives [now Committee on Government Reform of House of Representatives] not later than 60 days after the date of enactment of this Act [Oct. 19, 1998] regarding planning to comply with the requirements of this section.”

APPLICATION OF ANTITRUST LAWS TO AWARD OF NEED-BASED EDUCATIONAL AID

Pub. L. 107-72, § 3, Nov. 20, 2001, 115 Stat. 648, provided that:

“(a) STUDY.—

“(1) IN GENERAL.—The Comptroller General shall conduct a study of the effect of the antitrust exemption on institutional student aid under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) [Pub. L. 103-382, see below].

“(2) CONSULTATION.—The Comptroller General shall have final authority to determine the content of the study under paragraph (1), but in determining the content of the study, the Comptroller General shall consult with—

“(A) the institutions of higher education participating under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) (referred to in this Act [see Short Title of 2001 Amendment note above] as the ‘participating institutions’);

“(B) the Antitrust Division of the Department of Justice; and

“(C) other persons that the Comptroller General determines are appropriate.

“(3) MATTERS STUDIED.—

“(A) IN GENERAL.—The study under paragraph (1) shall—

“(i) examine the needs analysis methodologies used by participating institutions;

“(ii) identify trends in undergraduate costs of attendance and institutional undergraduate grant aid among participating institutions, including—

“(I) the percentage of first-year students receiving institutional grant aid;

“(II) the mean and median grant eligibility and institutional grant aid to first-year students; and

“(III) the mean and median parental and student contributions to undergraduate costs of attendance for first year students receiving institutional grant aid;

“(iii) to the extent useful in determining the effect of the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note), examine—

“(I) comparison data, identified in clauses (i) and (ii), from institutions of higher education that do not participate under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note); and

“(II) other baseline trend data from national benchmarks; and

“(iv) examine any other issues that the Comptroller General determines are appropriate, including other types of aid affected by section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note).

“(B) ASSESSMENT.—

“(i) IN GENERAL.—The study under paragraph (1) shall assess what effect the antitrust exemption on institutional student aid has had on institu-

tional undergraduate grant aid and parental contribution to undergraduate costs of attendance.

“(ii) CHANGES OVER TIME.—The assessment under clause (i) shall consider any changes in institutional undergraduate grant aid and parental contribution to undergraduate costs of attendance over time for institutions of higher education, including consideration of—

“(I) the time period prior to adoption of the consensus methodologies at participating institutions; and

“(II) the data examined pursuant to subparagraph (A)(iii).

“(b) REPORT.—

“(1) IN GENERAL.—Not later than September 30, 2006, the Comptroller General shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains the findings and conclusions of the Comptroller General regarding the matters studied under subsection (a).

“(2) IDENTIFYING INDIVIDUAL INSTITUTIONS.—The Comptroller General shall not identify an individual institution of higher education in information submitted in the report under paragraph (1) unless the information on the institution is available to the public.

“(c) RECORDKEEPING REQUIREMENT.—

“(1) IN GENERAL.—For the purpose of completing the study under subsection (a)(1), a participating institution shall—

“(A) collect and maintain for each academic year until the study under subsection (a)(1) is completed—

“(i) student-level data that is sufficient, in the judgment of the Comptroller General, to permit the analysis of expected family contributions, identified need, and undergraduate grant aid awards; and

“(ii) information on formulas used by the institution to determine need; and

“(B) submit the data and information under paragraph (1) to the Comptroller General at such time as the Comptroller General may reasonably require.

“(2) NON-PARTICIPATING INSTITUTIONS.—Nothing in this subsection shall be construed to require an institution of higher education that does not participate under the antitrust exemption under section 568 of the Improving America's Schools Act of 1994 (15 U.S.C. 1 note) to collect and maintain data under this subsection.”

Pub. L. 103-382, title V, § 568(a)–(d), Oct. 20, 1994, 108 Stat. 4060, 4061, as amended by Pub. L. 105-43, § 2(a), Sept. 17, 1997, 111 Stat. 1140; Pub. L. 105-244, title I, § 102(a)(3), Oct. 7, 1998, 112 Stat. 1618; Pub. L. 107-72, § 2, Nov. 20, 2001, 115 Stat. 648, provided that:

“(a) EXEMPTION.—It shall not be unlawful under the antitrust laws for 2 or more institutions of higher education at which all students admitted are admitted on a need-blind basis, to agree or attempt to agree—

“(1) to award such students financial aid only on the basis of demonstrated financial need for such aid;

“(2) to use common principles of analysis for determining the need of such students for financial aid if the agreement to use such principles does not restrict financial aid officers at such institutions in their exercising independent professional judgment with respect to individual applicants for such financial aid;

“(3) to use a common aid application form for need-based financial aid for such students if the agreement to use such form does not restrict such institutions in their requesting from such students, or in their using, data in addition to the data requested on such form; or

“(4) to exchange through an independent third party, before awarding need-based financial aid to any of such students who is commonly admitted to the institutions of higher education involved, data submitted by the student so admitted, the student's family, or a financial institution on behalf of the stu-

dent or the student's family relating to assets, liabilities, income, expenses, the number of family members, and the number of the student's siblings in college, if each of such institutions of higher education is permitted to retrieve such data only once with respect to the student.

“(b) LIMITATIONS.—Subsection (a) shall not apply with respect to—

“(1) any financial aid or assistance authorized by the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.); or

“(2) any contract, combination, or conspiracy with respect to the amount or terms of any prospective financial aid award to a specific individual.

“(c) DEFINITIONS.—For purposes of this section—

“(1) the term ‘alien’ has the meaning given such term in section 101(3) [101(a)(3)] of the Immigration and Nationality Act (8 U.S.C. 1101(3) [1101(a)(3)]);

“(2) the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition;

“(3) the term ‘institution of higher education’ has the meaning given such term in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001];

“(4) the term ‘lawfully admitted for permanent residence’ has the meaning given such term in section 101(20) [101(a)(20)] of the Immigration and Nationality Act (8 U.S.C. 1101(20) [1101(a)(20)]);

“(5) the term ‘national of the United States’ has the meaning given such term in section 101(22) [101(a)(22)] of the Immigration and Nationality Act (8 U.S.C. 1101(22) [1101(a)(22)]);

“(6) the term ‘on a need-blind basis’ means without regard to the financial circumstances of the student involved or the student's family; and

“(7) the term ‘student’ means, with respect to an institution of higher education, a national of the United States or an alien admitted for permanent residence who is admitted to attend an undergraduate program at such institution on a full-time basis.

“(d) EXPIRATION.—Subsection (a) shall expire on September 30, 2008.”

[Pub. L. 105-43, §2(b), Sept. 17, 1997, 111 Stat. 1140, provided that: “The amendments made by subsection (a) [amending section 568(a)-(d) of Pub. L. 103-382, set out above] shall take effect immediately before September 30, 1997.”]

SHERMAN ACT REFERRED TO IN OTHER SECTIONS

The Sherman Act [15 U.S.C. 1 to 7] is referred to in sections 12, 15c, 15d, 29, 44, 62, 1012, 1013, 3301, 3503 of this title; title 7 section 225; title 10 section 7430; title 12 sections 1828, 1849; title 16 section 2602; title 30 sections 184, 1413; title 40 section 559; title 42 sections 2135, 5417, 5909, 6202, 8235f, 9102; title 43 sections 970, 1331, 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4, 6, 6a, 7, 18a of this title.

§ 2. Monopolizing trade a felony; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, §2, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93-528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 101-588, §4(b), Nov. 16, 1990, 104 Stat. 2880.)

AMENDMENTS

1990—Pub. L. 101-588 substituted “\$10,000,000” for “one million dollars” and “\$350,000” for “one hundred thousand dollars”.

1974—Pub. L. 93-528 substituted “a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years” for “a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year”.

1955—Act July 7, 1955, substituted “fifty thousand dollars” for “five thousand dollars”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 18a of this title; title 12 section 1849.

§ 3. Trusts in Territories or District of Columbia illegal; combination a felony

(a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or both said punishments, in the discretion of the court.

(b) Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce in any Territory of the United States or of the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia, and any State or States or foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

(July 2, 1890, ch. 647, §3, 26 Stat. 209; July 7, 1955, ch. 281, 69 Stat. 282; Pub. L. 93-528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 101-588, §4(c), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 107-273, div. C, title IV, §14102(b), Nov. 2, 2002, 116 Stat. 1921.)

AMENDMENTS

2002—Pub. L. 107-273 designated existing provisions as subsec. (a) and added subsec. (b).

1990—Pub. L. 101-588 substituted “\$10,000,000” for “one million dollars” and “\$350,000” for “one hundred thousand dollars”.

1974—Pub. L. 93-528 substituted “a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years” for “a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year”.

1955—Act July 7, 1955, substituted “fifty thousand dollars” for “five thousand”.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-273, div. C, title IV, §14103, Nov. 2, 2002, 116 Stat. 1922, provided that:

“(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle [probably means this title, amending this section and sections 12, 27, and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing sections 30 and 31 of this title, enacting provisions set out as a note under section 1 of this title, amending provisions set out as notes under sections 1 and 8 of this title, and repealing provisions set out as notes under section 15 of this title and section 41309 of Title 49, Transportation] and the amendments made by this subtitle shall take effect on the date of enactment of this Act [Nov. 2, 2002].

“(b) APPLICATION TO CASES.—(1) Section 14102(f) [repealing section 30 of this title] shall apply to cases pending on or after the date of the enactment of this Act.

“(2) The amendments made by subsections (a), (b), and (c) of section 14102 [amending this section and sections 12 and 44 of this title, section 225 of Title 7, Agriculture, section 1413 of Title 30, Mineral Lands and Mining, and section 2135 of Title 42, The Public Health and Welfare, repealing section 31 of this title, amending provisions set out as a note under section 8 of this title, and repealing provisions set out as a note under section 15 of this title] shall apply only with respect to cases commenced on or after the date of enactment of this Act.”

§ 4. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(July 2, 1890, ch. 647, § 4, 26 Stat. 209; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in “district” courts, instead of “circuit” courts.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted “United States attorneys” for “district attorneys of

the United States”. See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5 of this title.

§ 5. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(July 2, 1890, ch. 647, § 5, 26 Stat. 210.)

§ 6. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(July 2, 1890, ch. 647, § 6, 26 Stat. 210.)

§ 6a. Conduct involving trade or commerce with foreign nations

Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—

(1) such conduct has a direct, substantial, and reasonably foreseeable effect—

(A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or

(B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and

(2) such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section.

If sections 1 to 7 of this title apply to such conduct only because of the operation of paragraph (1)(B), then sections 1 to 7 of this title shall apply to such conduct only for injury to export business in the United States.

(July 2, 1890, ch. 647, § 7, as added Pub. L. 97-290, title IV, § 402, Oct. 8, 1982, 96 Stat. 1246.)

PRIOR PROVISIONS

A prior section 7 of act July 2, 1890, ch. 647, 26 Stat. 210, related to suits by persons injured by acts in violation of sections 1 to 7 of this title and was classified as a note under section 15 of this title, prior to repeal by act July 7, 1955, ch. 283, § 3, 69 Stat. 283, effective six months after July 7, 1955.

§ 7. “Person” or “persons” defined

The word “person”, or “persons”, wherever used in sections 1 to 7 of this title shall be

deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(July 2, 1890, ch. 647, § 8, 26 Stat. 210.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6a of this title.

§ 8. Trusts in restraint of import trade illegal; penalty

Every combination, conspiracy, trust, agreement, or contract is declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations, either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who shall be engaged in the importation of goods or any commodity from any foreign country in violation of this section, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than \$100 and not exceeding \$5,000, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

(Aug. 27, 1894, ch. 349, § 73, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

AMENDMENTS

1913—Act Feb. 12, 1913, inserted “as agent or principal”.

SHORT TITLE

Section 77, formerly § 78, of act Aug. 27, 1894, as added by Pub. L. 94-435, title III, § 305(d), Sept. 30, 1976, 90 Stat. 1397; renumbered § 77 and amended Pub. L. 107-273, div. C, title IV, § 14102(c)(1)(B), Nov. 2, 2002, 116 Stat. 1921, provided that: “Sections 73, 74, 75, and 76 of this Act [enacting sections 8 to 11 of this title] may be cited as the ‘Wilson Tariff Act’.”

WILSON TARIFF ACT REFERRED TO IN OTHER SECTIONS

The Wilson Tariff Act [15 U.S.C. 8 to 11] is referred to in sections 12, 31, 44 of this title; title 7 section 225; title 16 section 2602, title 30 section 1413; title 42 section 2135; title 43 section 1331; title 49 section 10706.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9, 11, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 section 184; title 40 section 559; title 42 sections 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 9. Jurisdiction of courts; duty of United States attorneys; procedure

The several district courts of the United States are invested with jurisdiction to prevent

and restrain violations of section 8 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

(Aug. 27, 1894, ch. 349, § 74, 28 Stat. 570; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

CODIFICATION

Act Mar. 3, 1911, vested jurisdiction in “district” courts, instead of “circuit” courts.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted “United States attorneys” for “district attorneys of the United States”. See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 section 184; title 33 section 1331; title 40 section 559; title 42 sections 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

§ 10. Bringing in additional parties

Whenever it shall appear to the court before which any proceeding under section 9 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

(Aug. 27, 1894, ch. 349, § 75, 28 Stat. 570.)

§ 11. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section 8 of this title, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

(Aug. 27, 1894, ch. 349, § 76, 28 Stat. 570; Feb. 12, 1913, ch. 40, 37 Stat. 667.)

AMENDMENTS

1913—Act Feb. 12, 1913, substituted “imported into and being within the United States or” for “and”.

§ 12. Definitions; short title

(a) “Antitrust laws,” as used herein, includes the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety; sections seventy-three to seventy-six, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen; and also this Act.

“Commerce,” as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word “person” or “persons” wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(b) This Act may be cited as the “Clayton Act”.

(Oct. 15, 1914, ch. 323, §1, 38 Stat. 730; Pub. L. 94-435, title III, §305(b), Sept. 30, 1976, 90 Stat. 1397; Pub. L. 107-273, div. C, title IV, §14102(c)(2)(A), Nov. 2, 2002, 116 Stat. 1921.)

REFERENCES IN TEXT

Words “herein” and “this Act”, referred to in the three paragraphs of subsec. (a), mean the Clayton Act. For classification of the Clayton Act to the Code, see last paragraph hereunder.

The Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety, referred to in subsec. (a), is act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of this title.

The Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” of August twenty-seventh, eighteen hundred and ninety-four, referred to in subsec. (a), is act Aug. 27, 1894, ch. 349, 28 Stat. 509, as amended, known as the Wilson Tariff Act. Sections seventy-three to seventy-six thereof are set out as sections 8 to 11 of this title.

The Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen, referred to in subsec. (a), is act Feb. 12, 1913, ch. 40, 37 Stat. 667, as amended, which is classified to sections 8 and 11 of this title.

The Clayton Act, referred to in subsec. (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. Sections 9 and 21 to 25 of the act were repealed by act June 25, 1948, ch. 645, §21, 62 Stat. 862, eff. Sept. 1, 1948, and their provisions are now covered by sections 402, 660, 3285 and 3691 of Title 18, Crimes and Criminal Procedure, except that former section 23 of the act is obsolete and not now covered. Sections 17 to 19 of the act were repealed by act June 25, 1948, ch. 646, §39, 62 Stat. 992, eff. Sept. 1, 1948, and their provisions are now covered by rule 65 of the Federal Rules of Civil Procedure, set out in the Appendix to Title 28, Judiciary and Judicial Procedure. For complete classification of this Act to the Code, see Tables.

CODIFICATION

The 3d par. of subsec. (a) is also classified to section 53 of Title 29, Labor.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-273 substituted “seventy-three to seventy-six” for “seventy-three to seventy-seven” in first par.

1976—Pub. L. 94-435 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-273 effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107-273, set out as a note under section 3 of this title.

CLAYTON ACT REFERRED TO IN OTHER SECTIONS

The Clayton Act [see References in Text note above] is referred to in sections 35, 44, 57b-1, 1012, 1013, 3301, 3503 of this title; title 7 section 225; title 10 section 7430; title 12 sections 1828, 1849, 3208; title 16 section 2602; title 30 sections 184, 1413; title 33 section 1331; title 40 section 559; title 42 sections 2135, 5417, 5909, 6202, 8235f, 9102; title 43 section 1770; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. sections 1941a, 2158.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 34, 37a, 1291, 1311, 4002, 4021, 4301, 6211, 6701 of this title; title 12 sections 1831u, 1841; title 16 section 824k; title 17 section 109; title 19 sections 2033, 2561; title 28 section 1407; title 42 sections 7651b, 12007, 13271; title 46 App. section 885; title 47 section 303c; title 49 sections 13703, 13907, 14104, 40102, 41308, 41720.

§ 13. Discrimination in price, services, or facilities**(a) Price; selection of customers**

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either

of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however*, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further*, That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Burden of rebutting prima-facie case of discrimination

Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however*, That nothing herein contained shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(c) Payment or acceptance of commission, brokerage, or other compensation

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(d) Payment for services or facilities for processing or sale

It shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(e) Furnishing services or facilities for processing, handling, etc.

It shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(f) Knowingly inducing or receiving discriminatory price

It shall be unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

(Oct. 15, 1914, ch. 323, § 2, 38 Stat. 730; June 19, 1936, ch. 592, § 1, 49 Stat. 1526.)

AMENDMENTS

1936—Act June 19, 1936, amended section generally.

SHORT TITLE

Act June 19, 1936, which amended this section and added sections 13a, 13b, and 21a of this title, is popularly known as the Robinson-Patman Act, as the Robinson-Patman Antidiscrimination Act, and also as the Robinson-Patman Price Discrimination Act.

ROBINSON-PATMAN ANTIDISCRIMINATION ACT REFERRED TO IN OTHER SECTIONS

The Robinson-Patman Antidiscrimination Act [15 U.S.C. 13 to 13b, 21a] is referred to in sections 13b, 13c, 21a, 1013, 3301 of this title; title 10 section 7430; title 16 section 2602; title 30 sections 184, 1413; title 42 sections 5909, 6202; title 43 section 1331; title 45 section 791; title 46 App. section 1702; title 49 section 10706; title 50 App. section 2158.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 21a, 26 of this title; title 28 section 1407; title 30 section 184.

§ 13a. Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance,

or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000 or imprisoned not more than one year, or both.

(June 19, 1936, ch. 592, § 3, 49 Stat. 1528.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 28 section 1407; title 30 section 184; title 42 sections 6202, 8235f; title 49 section 10706.

§ 13b. Cooperative association; return of net earnings or surplus

Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

(June 19, 1936, ch. 592, § 4, 49 Stat. 1528.)

REFERENCES IN TEXT

This Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 28 section 1407; title 42 sections 6202, 8235f; title 49 section 10706.

§ 13c. Exemption of non-profit institutions from price discrimination provisions

Nothing in the Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.

(May 26, 1938, ch. 283, 52 Stat. 446.)

REFERENCES IN TEXT

The Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, also known as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

§ 14. Sale, etc., on agreement not to use goods of competitor

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(Oct. 15, 1914, ch. 323, § 3, 38 Stat. 731.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 26 of this title.

§ 15. Suits by persons injured

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether such person or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay, or otherwise acted in bad faith;

(2) whether, in the course of the action involved, such person or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(3) whether such person or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Amount of damages payable to foreign states and instrumentalities of foreign states

(1) Except as provided in paragraph (2), any person who is a foreign state may not recover under subsection (a) of this section an amount in excess of the actual damages sustained by it and the cost of suit, including a reasonable attorney's fee.

(2) Paragraph (1) shall not apply to a foreign state if—

(A) such foreign state would be denied, under section 1605(a)(2) of title 28, immunity in a case in which the action is based upon a commercial activity, or an act, that is the subject matter of its claim under this section;

(B) such foreign state waives all defenses based upon or arising out of its status as a foreign state, to any claims brought against it in the same action;

(C) such foreign state engages primarily in commercial activities; and

(D) such foreign state does not function, with respect to the commercial activity, or the act, that is the subject matter of its claim under this section as a procurement entity for itself or for another foreign state.

(c) Definitions

For purposes of this section—

(1) the term “commercial activity” shall have the meaning given it in section 1603(d) of title 28, and

(2) the term “foreign state” shall have the meaning given it in section 1603(a) of title 28.

(Oct. 15, 1914, ch. 323, § 4, 38 Stat. 731; Pub. L. 96-349, § 4(a)(1), Sept. 12, 1980, 94 Stat. 1156; Pub. L. 97-393, Dec. 29, 1982, 96 Stat. 1964.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

PRIOR PROVISIONS

Section supersedes two former similar sections enacted by act July 2, 1890, ch. 647, § 7, 26 Stat. 210, and act Aug. 27, 1894, ch. 349, § 77, 28 Stat. 570, each of which were restricted in operation to the particular act cited. Section 7 of act July 2, 1890, was repealed by act July 7, 1955, ch. 283, § 3, 69 Stat. 283, effective six months after July 7, 1955. Section 77 of act Aug. 27, 1894, was repealed by Pub. L. 107-273, div. C, title IV, §§ 14102(c)(1)(A), 14103, Nov. 2, 2002, 116 Stat. 1921, 1922, effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002.

AMENDMENTS

1982—Pub. L. 97-393 designated existing provisions as subsec. (a), inserted “Except as provided in subsection (b) of this section,” and added subsecs. (b) and (c).

1980—Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 4(b) of Pub. L. 96-349 provided that: “The amendments made by this section [amending this section and sections 15a and 15c of this title] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept 12, 1980].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 15c, 16, 35, 36, 4016, 4303, 4304 of this title; title 26 sections 162, 186; title 46 App. section 1706.

§ 15a. Suits by United States; amount of recovery; prejudgment interest

Whenever the United States is hereafter injured in its business or property by reason of anything forbidden in the antitrust laws it may sue therefor in the United States district court for the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by it sustained and the cost of suit. The court may award under this section, pursuant to a motion by the United States promptly made, simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

(1) whether the United States or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(2) whether, in the course of the action involved, the United States or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings;

(3) whether the United States or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof; and

(4) whether the award of such interest is necessary to compensate the United States adequately for the injury sustained by the United States.

(Oct. 15, 1914, ch. 323, § 4A, as added July 7, 1955, ch. 283, § 1, 69 Stat. 282; amended Pub. L. 96-349, § 4(a)(2), Sept. 12, 1980, 94 Stat. 1156; Pub. L. 101-588, § 5, Nov. 16, 1990, 104 Stat. 2880.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

AMENDMENTS

1990—Pub. L. 101-588 substituted “threefold the” for “actual”.

1980—Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-349 applicable only with respect to actions commenced after Sept. 12, 1980, see section 4(b) of Pub. L. 96-349, set out as a note under section 15 of this title.

EFFECTIVE DATE

Section effective six months after July 7, 1955, see note set out under section 15b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 16, 35, 36 of this title; title 28 section 1407.

§ 15b. Limitation of actions

Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act. (Oct. 15, 1914, ch. 323, §4B, as added July 7, 1955, ch. 283, §1, 69 Stat. 283; amended Pub. L. 94-435, title III, §302(1), Sept. 30, 1976, 90 Stat. 1396.)

REFERENCES IN TEXT

The effective date of this Act, referred to in text, probably refers to the effective date of act July 7, 1955, ch. 283, 69 Stat. 282, which was six months after July 7, 1955.

This Act, referred to in text, probably refers to act July 7, 1955.

AMENDMENTS

1976—Pub. L. 94-435 substituted “section 15, 15a, or 15c” for “sections 15 or 15a”.

EFFECTIVE DATE

Section 4 of act July 7, 1955, provided: “This Act [enacting this section and section 15a of this title, amending section 16 of this title, and repealing provisions set out as a note under section 15 of this title] shall take effect six months after its enactment [July 7, 1955].”

§ 15c. Actions by State attorneys general**(a) Parens patriae; monetary relief; damages; prejudgment interest**

(1) Any attorney general of a State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States having jurisdiction of the defendant, to secure monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of any violation of sections 1 to 7 of this title. The court shall exclude from the amount of monetary relief awarded in such action any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to subsection (b)(2) of this section, and (ii) any business entity.

(2) The court shall award the State as monetary relief threefold the total damage sustained as described in paragraph (1) of this subsection, and the cost of suit, including a reasonable attorney's fee. The court may award under this paragraph, pursuant to a motion by such State promptly made, simple interest on the total damage for the period beginning on the date of service of such State's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this paragraph for any period is just in the circumstances, the court shall consider only—

(A) whether such State or the opposing party, or either party's representative, made motions or asserted claims or defenses so lacking in merit as to show that such party or representative acted intentionally for delay or otherwise acted in bad faith;

(B) whether, in the course of the action involved, such State or the opposing party, or either party's representative, violated any applicable rule, statute, or court order providing for sanctions for dilatory behavior or otherwise providing for expeditious proceedings; and

(C) whether such State or the opposing party, or either party's representative, engaged in conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Notice; exclusion election; final judgment

(1) In any action brought under subsection (a)(1) of this section, the State attorney general shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (a)(1) of this section may elect to exclude from adjudication the portion of the State claim for monetary relief attributable to him by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

(3) The final judgment in an action under subsection (a)(1) of this section shall be res judicata as to any claim under section 15 of this title by any person on behalf of whom such action was brought and who fails to give such notice within the period specified in the notice given pursuant to paragraph (1) of this subsection.

(c) Dismissal or compromise of action

An action under subsection (a)(1) of this section shall not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(d) Attorneys' fees

In any action under subsection (a) of this section—

(1) the amount of the plaintiffs' attorney's fee, if any, shall be determined by the court; and

(2) the court may, in its discretion, award a reasonable attorney's fee to a prevailing defendant upon a finding that the State attorney general has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

(Oct. 15, 1914, ch. 323, §4C, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1394; amended Pub. L. 96-349, §4(a)(3), Sept. 12, 1980, 94 Stat. 1157.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a)(2), are defined in section 12 of this title.

AMENDMENTS

1980—Subsec. (a)(2). Pub. L. 96-349 inserted provisions respecting award of prejudgment interest including considerations for the court in determining whether an award is just under the circumstances.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-349 applicable only with respect to actions commenced after Sept. 12, 1980, see section 4(b) of Pub. L. 96-349, set out as a note under section 15 of this title.

EFFECTIVE DATE

Section 304 of Pub. L. 94-435 provided that: “The amendments to the Clayton Act made by section 301 of this Act [enacting this section and sections 15d to 15h of this title] shall not apply to any injury sustained prior to the date of enactment of this Act [Sept. 30, 1976].”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15b, 15d, 15e, 15g, 15h, 16, 35, 36, 4303 of this title; title 28 section 1407; title 42 section 1111.

§ 15d. Measurement of damages

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

(Oct. 15, 1914, ch. 323, §4D, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1395.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15g, 15h of this title.

§ 15e. Distribution of damages

Monetary relief recovered in an action under section 15c(a)(1) of this title shall—

- (1) be distributed in such manner as the district court in its discretion may authorize; or
- (2) be deemed a civil penalty by the court and deposited with the State as general revenues;

subject in either case to the requirement that any distribution procedure adopted afford each person a reasonable opportunity to secure his appropriate portion of the net monetary relief.

(Oct. 15, 1914, ch. 323, §4E, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1395.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15g, 15h of this title.

§ 15f. Actions by Attorney General**(a) Notification to State attorney general**

Whenever the Attorney General of the United States has brought an action under the antitrust laws, and he has reason to believe that any State attorney general would be entitled to bring an action under this Act based substantially on the same alleged violation of the antitrust laws, he shall promptly give written notification thereof to such State attorney general.

(b) Availability of files and other materials

To assist a State attorney general in evaluating the notice or in bringing any action under this Act, the Attorney General of the United States shall, upon request by such State attorney general, make available to him, to the extent permitted by law, any investigative files or other materials which are or may be relevant or material to the actual or potential cause of action under this Act.

(Oct. 15, 1914, ch. 323, §4F, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1395.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a), are defined in section 12 of this title.

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15g, 15h of this title.

§ 15g. Definitions

For the purposes of sections 15c, 15d, 15e, and 15f of this title:

(1) The term “State attorney general” means the chief legal officer of a State, or any other person authorized by State law to bring actions under section 15c of this title, and includes the Corporation Counsel of the District of Columbia, except that such term does not include any person employed or retained on—

(A) a contingency fee based on a percentage of the monetary relief awarded under this section; or

(B) any other contingency fee basis, unless the amount of the award of a reasonable attorney’s fee to a prevailing plaintiff is determined by the court under section 15c(d)(1) of this title.

(2) The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(3) The term “natural persons” does not include proprietorships or partnerships.

(Oct. 15, 1914, ch. 323, §4G, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1396.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15h, 34, 37a, 4301 of this title.

§ 15h. Applicability of parens patriae actions

Sections 15c, 15d, 15e, 15f, and 15g of this title shall apply in any State, unless such State provides by law for its nonapplicability in such State.

(Oct. 15, 1914, ch. 323, §4H, as added Pub. L. 94-435, title III, §301, Sept. 30, 1976, 90 Stat. 1396.)

EFFECTIVE DATE

Injuries sustained prior to Sept. 30, 1976, not covered by this section, see section 304 of Pub. L. 94-435, set out as a note under section 15c of this title.

§ 16. Judgments**(a) Prima facie evidence; collateral estoppel**

A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, That this section shall not apply to consent judgments or decrees entered before any testimony has been taken. Nothing contained in this section shall be construed to impose any limitation on the application of collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws.

(b) Consent judgments and competitive impact statements; publication in Federal Register; availability of copies to the public

Any proposal for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws shall be filed with the district court before which such proceeding is pending and published by the United States in the Federal Register at least 60 days prior to the effective date of such judgment. Any written comments relating to such proposal and any responses by the United States thereto, shall also be filed with such district court and published by the United States in the Federal Register within such sixty-day period. Copies of such proposal and any other materials and documents which the United States considered determinative in formulating such proposal, shall also be made available to the public at the district court and in such other districts as the court may subsequently direct. Simultaneously with the filing of such proposal, unless other-

wise instructed by the court, the United States shall file with the district court, publish in the Federal Register, and thereafter furnish to any person upon request, a competitive impact statement which shall recite—

- (1) the nature and purpose of the proceeding;
- (2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;
- (3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;
- (4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;
- (5) a description of the procedures available for modification of such proposal; and
- (6) a description and evaluation of alternatives to such proposal actually considered by the United States.

(c) Publication of summaries in newspapers

The United States shall also cause to be published, commencing at least 60 days prior to the effective date of the judgment described in subsection (b) of this section, for 7 days over a period of 2 weeks in newspapers of general circulation of the district in which the case has been filed, in the District of Columbia, and in such other districts as the court may direct—

- (i) a summary of the terms of the proposal for consent judgment,
- (ii) a summary of the competitive impact statement filed under subsection (b) of this section,
- (iii) and a list of the materials and documents under subsection (b) of this section which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

(d) Consideration of public comments by Attorney General and publication of response

During the 60-day period as specified in subsection (b) of this section, and such additional time as the United States may request and the court may grant, the United States shall receive and consider any written comments relating to the proposal for the consent judgment submitted under subsection (b) of this section. The Attorney General or his designee shall establish procedures to carry out the provisions of this subsection, but such 60-day time period shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest. At the close of the period during which such comments may be received, the United States shall file with the district court and cause to be published in the Federal Register a response to such comments.

(e) Public interest determination

Before entering any consent judgment proposed by the United States under this section,

the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

(f) Procedure for public interest determination

In making its determination under subsection (e) of this section, the court may—

(1) take testimony of Government officials or experts or such other expert witnesses, upon motion of any party or participant or upon its own motion, as the court may deem appropriate;

(2) appoint a special master and such outside consultants or expert witnesses as the court may deem appropriate; and request and obtain the views, evaluations, or advice of any individual, group or agency of government with respect to any aspects of the proposed judgment or the effect of such judgment, in such manner as the court deems appropriate;

(3) authorize full or limited participation in proceedings before the court by interested persons or agencies, including appearance amicus curiae, intervention as a party pursuant to the Federal Rules of Civil Procedure, examination of witnesses or documentary materials, or participation in any other manner and extent which serves the public interest as the court may deem appropriate;

(4) review any comments including any objections filed with the United States under subsection (d) of this section concerning the proposed judgment and the responses of the United States to such comments and objections; and

(5) take such other action in the public interest as the court may deem appropriate.

(g) Filing of written or oral communications with the district court

Not later than 10 days following the date of the filing of any proposal for a consent judgment under subsection (b) of this section, each defendant shall file with the district court a description of any and all written or oral communications by or on behalf of such defendant, including any and all written or oral communications on behalf of such defendant, or other person, with any officer or employee of the United States concerning or relevant to such proposal, except that any such communications made by counsel of record alone with the Attorney General or the employees of the Department of Justice alone shall be excluded from the requirements of this subsection. Prior to the entry of any consent judgment pursuant to the antitrust laws, each defendant shall certify to the district court that the requirements of this subsection

have been complied with and that such filing is a true and complete description of such communications known to the defendant or which the defendant reasonably should have known.

(h) Inadmissibility as evidence of proceedings before the district court and the competitive impact statement

Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant under the antitrust laws or by the United States under section 15a of this title nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

(i) Suspension of limitations

Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, but not including an action under section 15a of this title, the running of the statute of limitations in respect to every private or State right of action arising under said laws and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter: *Provided, however*, That whenever the running of the statute of limitations in respect of a cause of action arising under section 15 or 15c of this title is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

(Oct. 15, 1914, ch. 323, § 5, 38 Stat. 731; July 7, 1955, ch. 283, § 2, 69 Stat. 283; Pub. L. 93-528, § 2, Dec. 21, 1974, 88 Stat. 1706; Pub. L. 94-435, title III, § 302(2), Sept. 30, 1976, 90 Stat. 1396; Pub. L. 96-349, § 5(a), Sept. 12, 1980, 94 Stat. 1157.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (a), (b), and (g) to (i), are defined in section 12 of this title.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-349 made collateral estoppel inapplicable in any action or proceeding brought under the antitrust laws to any finding made by the Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws; struck out “or by the United States under section 15a of this title,” after “under said laws”; and deleted from proviso “or to judgments or decrees entered in actions under section 15a of this title” after “testimony has been taken”.

1976—Pub. L. 94-435 substituted “private or State right of action” for “private right of action” and “section 15 or 15c” for “section 15”.

1974—Subsecs. (b) to (i). Pub. L. 93-528 added subsecs. (b) to (h) and redesignated former subsec. (b) as (i).

1955—Act July 7, 1955, substituted subsec. (a) for first paragraph, to provide that final judgments in actions under the antitrust laws by the United States shall be prima facie evidence in damage suits by the United States as well as in private damage suits, and substituted subsec. (b) for second paragraph, to provide for a one-year suspension of limitations.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(b) of Pub. L. 96-349 provided that: “The amendments made by this section [amending this section] shall apply only with respect to actions commenced after the date of the enactment of this Act [Sept. 12, 1980].”

SUSPENSION OF LIMITATION

Act Oct. 10, 1942, ch. 589, 56 Stat. 781, as amended June 30, 1945, ch. 213, 59 Stat. 306, provided for the suspension of any existing statutes of limitations relating to violations of antitrust laws now indictable or subject to civil proceedings under any existing statutes, until June 30, 1946.

§ 17. Antitrust laws not applicable to labor organizations

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

(Oct. 15, 1914, ch. 323, § 6, 38 Stat. 731.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 1951; title 29 section 186; title 47 section 606.

§ 18. Acquisition by one corporation of stock of another

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

No person shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of one or more persons engaged in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition, of such stocks or assets, or of the use of such stock by the voting or granting of proxies or otherwise, may be substantially to lessen competition, or to tend to create a monopoly.

This section shall not apply to persons purchasing such stock solely for investment and

not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce or in any activity affecting commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Nothing contained in this section shall apply to transactions duly consummated pursuant to authority given by the Secretary of Transportation, Federal Power Commission, Surface Transportation Board, the Securities and Exchange Commission in the exercise of its jurisdiction under section 79j of this title, the United States Maritime Commission, or the Secretary of Agriculture under any statutory provision vesting such power in such Commission, Board, or Secretary.

(Oct. 15, 1914, ch. 323, § 7, 38 Stat. 731; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Pub. L. 96-349, § 6(a), Sept. 12, 1980, 94 Stat. 1157; Pub. L. 98-443, § 9(1), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 104-88, title III, § 318(1), Dec. 29, 1995, 109 Stat. 949; Pub. L. 104-104, title VI, § 601(b)(3), Feb. 8, 1996, 110 Stat. 143.)

AMENDMENTS

1996—Pub. L. 104-104, in sixth par., struck out “Federal Communications Commission,” after “Secretary of Transportation.”

1995—Pub. L. 104-88, in sixth par., substituted “Surface Transportation Board” for “Interstate Commerce Commission” and inserted “, Board,” after “vesting such power in such Commission”.

1984—Pub. L. 98-443 substituted “Secretary of Transportation” for “Civil Aeronautics Board” and “Com-

mission or Secretary” for “Commission, Secretary, or Board” in sixth par.

1980—Pub. L. 96-349, substituted “person” for “corporation” wherever appearing in first and second pars.; substituted “persons” for “corporations” in second par. and first sentence of third par.; and inserted “or in any activity affecting commerce” after “commerce” wherever appearing in first, second, and third pars.

1950—Act Dec. 29, 1950, amended section generally so as to prohibit the acquisition of the whole or any part of the assets of another corporation when the effect of the acquisition may substantially lessen competition or tend to create a monopoly.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 6(b) of Pub. L. 96-349 provided that: “The amendments made by this section [amending this section] shall apply only with respect to acquisitions made after the date of the enactment of this Act [Sept. 12, 1980].”

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

Executive and administrative functions of Maritime Commission transferred to Chairman of Maritime Commission by Reorg. Plan No. 6 of 1949, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1069, set out in the Appendix to Title 5, Government Organization and Employees. See, also, notes set out under section 1111 of Title 46, Appendix, Shipping.

United States Maritime Commission abolished by Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, which transferred part of its functions and part of functions of its Chairman, to Federal Maritime Board and Chairman thereof, such Board having been created by that Plan as an agency within Department of Commerce with an independent status in some respects, and transferred remainder of such Commission’s functions and functions of its Chairman to Secretary of Commerce, with power vested in Secretary to authorize their performance by Maritime Administrator (the head of Maritime Administration, which likewise established by the Plan in Department of Commerce) with provision that Chairman of Federal Maritime Board should, ex officio, be such Administrator.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished Federal Maritime Board, including offices of members of Board. Functions of Board transferred either to Federal Maritime Commission or Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

Maritime Administration of Department of Commerce transferred to Department of Transportation, and all related functions of Secretary and other officers and offices of Department of Commerce transferred to Department of Transportation and vested in Secretary of Transportation, see section 1601 et seq. of Title 46, Appendix, Shipping.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18a, 21, 26, 63 of this title.

§ 18a. Premerger notification and waiting period

(a) Filing

Except as exempted pursuant to subsection (c) of this section, no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) of this section and the waiting period described in subsection (b)(1) of this section has expired, if—

(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce; and

(2) as a result of such acquisition, the acquiring person would hold an aggregate total amount of the voting securities and assets of the acquired person—

(A) in excess of \$200,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 19(a)(5) of this title to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003); or

(B)(i) in excess of \$50,000,000 (as so adjusted and published) but not in excess of \$200,000,000 (as so adjusted and published); and

(ii)(I) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more;

(II) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 (as so adjusted and published) or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 (as so adjusted and published) or more; or

(III) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 (as so adjusted and published) or more are being acquired by any person with total assets or annual net sales of \$10,000,000 (as so adjusted and published) or more.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d) of this section.

(b) Waiting period; publication; voting securities

(1) The waiting period required under subsection (a) of this section shall—

(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the “Assistant Attorney General”) of—

(i) the completed notification required under subsection (a) of this section, or

(ii) if such notification is not completed, the notification to the extent completed and

a statement of the reasons for such non-compliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2) of this section.

(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the Federal Register a notice that neither intends to take any action within such period with respect to such acquisition.

(3) As used in this section—

(A) The term “voting securities” means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

(c) Exempt transactions

The following classes of transactions are exempt from the requirements of this section—

(1) acquisitions of goods or realty transferred in the ordinary course of business;

(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;

(4) transfers to or from a Federal agency or a State or political subdivision thereof;

(5) transactions specifically exempted from the antitrust laws by Federal statute;

(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

(7) transactions which require agency approval under section 1467a(e) of title 12, section 1828(c) of title 12, or section 1842 of title 12, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1842 of title 12;

(8) transactions which require agency approval under section 1843 of title 12 or section 1464 of title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant

Attorney General at least 30 days prior to consummation of the proposed transaction, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1843 of title 12;

(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B) of this section.

(d) Commission rules

The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this section—

(1) shall require that the notification required under subsection (a) of this section be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and

(2) may—

(A) define the terms used in this section;

(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

(e) Additional information; waiting period extensions

(1)(A) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

(B)(i) The Assistant Attorney General and the Federal Trade Commission shall each designate a senior official who does not have direct re-

sponsibility for the review of any enforcement recommendation under this section concerning the transaction at issue, to hear any petition filed by such person to determine—

(I) whether the request for additional information or documentary material is unreasonably cumulative, unduly burdensome, or duplicative; or

(II) whether the request for additional information or documentary material has been substantially complied with by the petitioning person.

(ii) Internal review procedures for petitions filed pursuant to clause (i) shall include reasonable deadlines for expedited review of such petitions, after reasonable negotiations with investigative staff, in order to avoid undue delay of the merger review process.

(iii) Not later than 90 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall conduct an internal review and implement reforms of the merger review process in order to eliminate unnecessary burden, remove costly duplication, and eliminate undue delay, in order to achieve a more effective and more efficient merger review process.

(iv) Not later than 120 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall issue or amend their respective industry guidance, regulations, operating manuals and relevant policy documents, to the extent appropriate, to implement each reform in this subparagraph.

(v) Not later than 180 days after December 21, 2000, the Assistant Attorney General and the Federal Trade Commission shall each report to Congress—

(I) which reforms each agency has adopted under this subparagraph;

(II) which steps each has taken to implement such internal reforms; and

(III) the effects of such reforms.

(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section for an additional period of not more than 30 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g)(2) of this section.

(f) Preliminary injunctions; hearings

If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging

that a proposed acquisition violates section 18 of this title, or section 45 of this title, or an action is filed by the United States, alleging that a proposed acquisition violates such section 18 of this title, or section 1 or 2 of this title, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection, then upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes.

(g) Civil penalty; compliance; power of court

(1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than \$10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) of this section or any request for the submission of additional information or documentary material under subsection (e)(1) of this section within the waiting period specified in subsection (b)(1) of this section and as may be extended under subsection (e)(2) of this section, the United States district court—

(A) may order compliance;

(B) shall extend the waiting period specified in subsection (b)(1) of this section and as may have been extended under subsection (e)(2) of this section until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

(h) Disclosure exemption

Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

(i) Construction with other laws

(1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of law.

(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act [15 U.S.C. 1311 et seq.], the Federal Trade Commission Act [15 U.S.C. 41 et seq.], or any other provision of law.

(j) Omitted**(k) Extensions of time**

If the end of any period of time provided in this section falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103(a) of title 5), then such period shall be extended to the end of the next day that is not a Saturday, Sunday, or legal public holiday.

(Oct. 15, 1914, ch. 323, §7A, as added Pub. L. 94-435, title II, §201, Sept. 30, 1976, 90 Stat. 1390; amended Pub. L. 98-620, title IV, §402(10)(A), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 101-73, title XII, §1214, Aug. 9, 1989, 103 Stat. 529; Pub. L. 106-102, title I, §133(c), Nov. 12, 1999, 113 Stat. 1383; Pub. L. 106-553, §1(a)(2) [title VI, §630(a), (c), (d)], Dec. 21, 2000, 114 Stat. 2762, 2762A-108, 2762A-110.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsecs. (c), (d), are defined in section 12 of this title.

This Act, referred to in subsec. (i)(1), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (i)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Antitrust Civil Process Act, referred to in subsec. (i)(2), is Pub. L. 87-664, Sept. 19, 1962, 76 Stat. 548, as amended, which is classified generally to chapter 34 (§1311 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1311 of this title and Tables.

CODIFICATION

December 21, 2000, referred to in subsec. (e)(1)(B), was in the original “the date of the enactment of this Act” which was translated as meaning the date of enactment of Pub. L. 106-553, which enacted subsec. (e)(1)(B), to reflect the probable intent of Congress.

Subsection (j), which required the Federal Trade Commission, with the concurrence of the Assistant Attorney General, to report annually to Congress on the operation of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title

31, Money and Finance. See, also, page 172 of House Document No. 103-7.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106-553, §1(a)(2) [title VI, §630(a)], amended subsec. (a) generally, reenacting introductory provisions, par. (1), and concluding provisions without change, adding par. (2), and striking out former pars. (2) and (3) which read as follows:

“(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of \$10,000,000 or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 or more;

“(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of \$10,000,000 or more are being acquired by any person which has total assets or annual net sales of \$100,000,000 or more; or

“(C) any voting securities or assets of a person with annual net sales or total assets of \$100,000,000 or more are being acquired by any person with total assets or annual net sales of \$10,000,000 or more; and

“(3) as a result of such acquisition, the acquiring person would hold—

“(A) 15 per centum or more of the voting securities or assets of the acquired person, or

“(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of \$15,000,000.”

Subsec. (e)(1). Pub. L. 106-553, §1(a)(2) [title VI, §630(c)], designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(2). Pub. L. 106-553, §1(a)(2) [title VI, §630(d)(1)], substituted “30 days” for “20 days”.

Subsec. (k). Pub. L. 106-553, §1(a)(2) [title VI, §630(d)(2)], added subsec. (k).

1999—Subsec. (c)(7). Pub. L. 106-102, §133(c)(1), inserted before semicolon at end “, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1842 of title 12”.

Subsec. (c)(8). Pub. L. 106-102, §133(c)(2), inserted before semicolon at end “, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1843 of title 12”.

1989—Subsec. (c)(7). Pub. L. 101-73, §1214(1), inserted reference to section 1467a(e) of title 12.

Subsec. (c)(8). Pub. L. 101-73, §1214(2), struck out reference to section 1726 or 1730a(e) of title 12.

1984—Subsec. (f)(2). Pub. L. 98-620 struck out designation “(A)” before “upon the filing”, and struck out subpar. (B) which had provided that if the Federal Trade Commission or the Assistant Attorney General certified that he or it believed that the public interest required relief pendente lite pursuant to this subsection, the motion for a preliminary injunction had to be set down for hearing by the district judge so designated at the earliest practicable time, would take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, and had to be in every way expedited.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-553, §1(a)(2) [title VI, §630(e)], Dec. 21, 2000, 114 Stat. 2762, 2762A-111, provided that: “This section [amending this section and provisions set out as a note under this section] and the amendments made by this section shall take effect on the 1st day of the 1st month that begins more than 30 days after the date of the enactment of this Act [Dec. 21, 2000].”

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section 202 of Pub. L. 94-435 provided that: “The amendment made by section 201 of this Act [enacting this section] shall take effect 150 days after the date of enactment of this Act [Sept. 30, 1976], except that subsection (d) of section 7A of the Clayton Act [subsec. (d) of this section] (as added by section 201 of this Act) shall take effect on the date of enactment of this Act.”

ASSESSMENT AND COLLECTION OF FILING FEES

Pub. L. 101-162, title VI, § 605, Nov. 21, 1989, 103 Stat. 1031, as amended by Pub. L. 101-302, title II, May 25, 1990, 104 Stat. 217; Pub. L. 102-395, title I, Oct. 6, 1992, 106 Stat. 1847; Pub. L. 103-317, title I, Aug. 26, 1994, 108 Stat. 1739; Pub. L. 106-553, § 1(a)(2) [title VI, § 630(b)], Dec. 21, 2000, 114 Stat. 2762, 2762A-109, provided that:

“(a) Five working days after enactment of this Act [Nov. 21, 1989] and thereafter, the Federal Trade Commission shall assess and collect filing fees established in subsection (b) which shall be paid by persons acquiring voting securities or assets who are required to file premerger notifications by the [sic] section 7A of the Clayton Act (15 U.S.C. 18a) and the regulations promulgated thereunder. For purposes of said Act, no notification shall be considered filed until payment of the fee required by this section. Fees collected pursuant to this section shall be divided evenly between and credited to the appropriations, Federal Trade Commission, ‘Salaries and Expenses’ and Department of Justice, ‘Salaries and Expenses, Antitrust Division’: *Provided*, That fees in excess of \$40,000,000 in fiscal year 1990 shall be deposited to the credit of the Treasury of the United States: *Provided further*, That fees made available to the Federal Trade Commission and the Antitrust Division herein shall remain available until expended.

“(b) The filing fees referred to in subsection (a) are—

“(1) \$45,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is less than \$100,000,000 (as adjusted and published for each fiscal year beginning after September 30, 2004, in the same manner as provided in section 8(a)(5) of the Clayton Act (15 U.S.C. 19(a)(5)) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2003);

“(2) \$125,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$100,000,000 (as so adjusted and published) but less than \$500,000,000 (as so adjusted and published); and

“(3) \$280,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$500,000,000 (as so adjusted and published).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6204 of this title; title 11 section 363.

§ 19. Interlocking directorates and officers

(a)(1) No person shall, at the same time, serve as a director or officer in any two corporations (other than banks, banking associations, and trust companies) that are—

(A) engaged in whole or in part in commerce; and

(B) by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the antitrust laws;

if each of the corporations has capital, surplus, and undivided profits aggregating more than \$10,000,000 as adjusted pursuant to paragraph (5) of this subsection.

(2) Notwithstanding the provisions of paragraph (1), simultaneous service as a director or officer in any two corporations shall not be prohibited by this section if—

(A) the competitive sales of either corporation are less than \$1,000,000, as adjusted pursuant to paragraph (5) of this subsection;

(B) the competitive sales of either corporation are less than 2 per centum of that corporation's total sales; or

(C) the competitive sales of each corporation are less than 4 per centum of that corporation's total sales.

For purposes of this paragraph, “competitive sales” means the gross revenues for all products and services sold by one corporation in competition with the other, determined on the basis of annual gross revenues for such products and services in that corporation's last completed fiscal year. For the purposes of this paragraph, “total sales” means the gross revenues for all products and services sold by one corporation over that corporation's last completed fiscal year.

(3) The eligibility of a director or officer under the provisions of paragraph (1) shall be determined by the capital, surplus and undivided profits, exclusive of dividends declared but not paid to stockholders, of each corporation at the end of that corporation's last completed fiscal year.

(4) For purposes of this section, the term “officer” means an officer elected or chosen by the Board of Directors.

(5) For each fiscal year commencing after September 30, 1990, the \$10,000,000 and \$1,000,000 thresholds in this subsection shall be increased (or decreased) as of October 1 each year by an amount equal to the percentage increase (or decrease) in the gross national product, as determined by the Department of Commerce or its successor, for the year then ended over the level so established for the year ending September 30, 1989. As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by this paragraph.

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.

(Oct. 15, 1914, ch. 323, § 8, 38 Stat. 732; May 15, 1916, ch. 120, 39 Stat. 121; May 26, 1920, ch. 206, 41 Stat. 626; Mar. 9, 1928, ch. 165, 45 Stat. 253; Mar. 2, 1929, ch. 581, 45 Stat. 1536; Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717; Pub. L. 101-588, § 2, Nov. 16, 1990, 104 Stat. 2879; Pub. L. 103-203, § 1, Dec. 17, 1993, 107 Stat. 2368.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (a)(1)(B), are defined in section 12 of this title.

AMENDMENTS

1993—Subsec. (a)(5). Pub. L. 103-203 substituted “January 31” for “October 30”.

1990—Pub. L. 101-588 amended section generally, completely revising it in form by substituting text divided into a subsec. (a) consisting of five numbered paragraphs and a subsec. (b) consisting of a single unnumbered paragraph for former provisions which had consisted of a series of five undesignated paragraphs, and in substance by increasing the jurisdictional threshold for application of the section to corporations from \$1,000,000 in net worth to \$10,000,000 in net worth, creating three “de minimis” exceptions to applications of the section in cases of insignificant competitive overlaps, and expanding the section to cover officers elected or chosen by the Board of Directors.

1935—Act Aug. 23, 1935, amended section generally.

1929—Act Mar. 2, 1929, amended second par.

1928—Act Mar. 9, 1928, amended second par.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18a, 21, 26 of this title; title 12 section 3205.

§ 19a. Repealed. Aug. 23, 1935, ch. 614, § 329, 49 Stat. 717

Section, act Oct. 15, 1914, ch. 323, § 8a, as added June 16, 1933, ch. 89, § 33, 48 Stat. 194, related to interlocking corporations or partnerships making loans on securities.

§ 20. Repealed. Pub. L. 101-588, § 3, Nov. 16, 1990, 104 Stat. 2880

Section, act Oct. 15, 1914, ch. 323, § 10, 38 Stat. 734, related to a \$50,000 yearly, aggregate limitation on purchases and contracts between a common carrier and any entity with whom such carrier has any form of interlocking directorate, etc., required filing with ICC of a full statement of transactions excluded from such limitation, and set forth fines and penalties for violation of such limitation.

§ 21. Enforcement provisions

(a) Commission, Board, or Secretary authorized to enforce compliance

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested in the Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; in the Secretary of Transportation where applicable to air carriers and foreign air carriers subject to part A of subtitle VII of title 49; in the Board of Governors of the Federal Reserve System where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce to be exercised as follows:

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report; cease and desist orders; reopening and alteration of reports or orders

Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall

have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

(c) Review of orders; jurisdiction; filing of petition and record of proceeding; conclusiveness of findings; additional evidence; modification of findings; finality of judgment and decree

Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Exclusive jurisdiction of Court of Appeals

Upon the filing of the record with its jurisdiction of the court of appeals to affirm, enforce, modify, or set aside orders of the commission, board, or Secretary shall be exclusive.

(e) Liability under antitrust laws

No order of the commission, board, or Secretary or judgment of the court to enforce the same shall in anywise relieve or absolve any person from any liability under the antitrust laws.

(f) Service of complaints, orders and other processes

Complaints, orders, and other processes of the commission, board, or Secretary under this section may be serviced by anyone duly authorized by the commission, board, or Secretary, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the residence or the principal office or place of business of such person; or (3) by mailing by registered or certified mail a copy thereof addressed to such person at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered or certified mail as aforesaid shall be proof of the service of the same.

(g) Finality of orders generally

Any order issued under subsection (b) of this section shall become final—

(1) upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the commission, board, or Secretary may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b) of this section; or

(2) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed, or the petition for review has been dismissed by the court of appeals, and no petition for certiorari has been duly filed; or

(3) upon the denial of a petition for certiorari, if the order of the commission, board, or Secretary has been affirmed or the petition for review has been dismissed by the court of appeals; or

(4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the commission, board, or Secretary be affirmed or the petition for review be dismissed.

(h) Finality of orders modified by Supreme Court

If the Supreme Court directs that the order of the commission, board, or Secretary be modified or set aside, the order of the commission, board, or Secretary rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(i) Finality of orders modified by Court of Appeals

If the order of the commission, board, or Secretary is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court then the order of the commission, board, or Secretary rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the commission, board, or Secretary was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the commission, board, or Secretary shall become final when so corrected.

(j) Finality of orders issued on rehearing ordered by Court of Appeals or Supreme Court

If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the commission, board, or Secretary for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the commission, board, or Secretary rendered upon such rehearing shall become final in the same manner as though no prior order of the commission, board, or Secretary had been rendered.

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Penalties

Any person who violates any order issued by the commission, board, or Secretary under subsection (b) of this section after such order has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$5,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the United States. Each separate violation of any such order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the commission, board, or Secretary each day of continuance of such failure or neglect shall be deemed a separate offense.

(Oct. 15, 1914, ch. 323, §11, 38 Stat. 734; June 19, 1934, ch. 652, title VII, §702(d), formerly title VI, §602(d), 48 Stat. 1102; renumbered Pub. L. 98-549, §6(a), Oct. 30, 1984, 98 Stat. 2804; Aug. 23, 1935, ch. 614, §203(a), 49 Stat. 704; June 23, 1938, ch. 601, §1107(g), 52 Stat. 1028; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Dec. 29, 1950, ch. 1184, 64 Stat. 1125; Pub. L. 85-726, title XIV, §1401(b), Aug. 23, 1958, 72 Stat. 806; Pub. L. 85-791, §4, Aug. 28, 1958, 72 Stat. 943; Pub. L. 86-107, §1, July 23, 1959, 73 Stat. 243; Pub. L. 98-443, §9(m), Oct. 4, 1984, 98 Stat.

1708; Pub. L. 98-620, title IV, §402(10)(B), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 104-88, title III, §318(2), Dec. 29, 1995, 109 Stat. 949.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (e), are defined in section 12 of this title.

CODIFICATION

In subsec. (a), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104-88 substituted "Surface Transportation Board where applicable to common carriers subject to jurisdiction under subtitle IV of title 49" for "Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended".

1984—Subsec. (a). Pub. L. 98-443, §9(m)(1), substituted "Secretary of Transportation where applicable to air carriers and foreign air carriers subject to the Federal Aviation Act of 1958" for "Civil Aeronautics Board where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 98-443, §9(m)(2), substituted "Commission, Board, or Secretary" for "Commission or Board" wherever appearing.

Subsecs. (c), (d). Pub. L. 98-443, §9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

Subsec. (e). Pub. L. 98-620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

Pub. L. 98-443, §9(m)(3), substituted "commission, board, or Secretary" for "commission or board".

Subsecs. (f) to (j), (l). Pub. L. 98-443, §9(m)(3), substituted "commission, board, or Secretary" for "commission or board" wherever appearing.

1959—Pub. L. 86-107 amended section generally, and among other changes, authorized the Commission or Board, upon notice and opportunity for hearing, in cases where a petition for review has not been filed within the time allowed, to reopen and alter, modify, or set aside, in whole or in part, any report or order, whenever conditions of fact or law have so changed as to require such action or if the public interest so requires, and added subsecs. (g) to (k), providing for finality of orders, and subsec. (l), prescribing the civil penalty for violation of orders.

1958—Pub. L. 85-791, §4(a), struck out "a transcript of" after "Until" in last sentence of second par.

Pub. L. 85-791, §4(b), substituted in first sentence of third par., "file the record in the proceeding, as provided in section 2112 of title 28" for "certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the Commission or Board", and in second sentence of third par., struck out "and transcript" after "application", inserted "concurrently with the Commission or Board until the filing of the record", and struck out "upon the pleadings, testimony, and proceedings set forth in such transcript" after "make and enter".

Pub. L. 85-791, §4(c), substituted in second sentence of fourth par., "transmitted by the clerk of the court to" for "served upon" and "shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "forthwith shall certify and file in the court a transcript of the record in the proceeding, as hereinbefore provided", and in third sentence of fourth paragraph substituted "such petition" for "the transcript" and inserted "determined as provided in section 1009(e) of title 5."

Pub. L. 85-791, §4(d), substituted in fifth par., "Upon the filing of the record with it the" for "The".

1950—Act Dec. 29, 1950, amended section generally to allow the Attorney General to intervene and appear in any proceeding brought by any Commission or Board to enforce sections 13, 14, 18, and 19 of this title, but the amendment in nowise affects the jurisdiction of the Department of Justice to enforce these sections in the courts.

1938—Act June 23, 1938, inserted “in the Civil Aeronautics Authority where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938”, and “authority” after “commission” wherever appearing.

1935—Act Aug. 23, 1935, changed the name of Federal Reserve Board to Board of Governors of the Federal Reserve System.

1934—Act June 19, 1934, amended first par.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted “court of appeals” for “circuit court of appeals”.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1959 AMENDMENT

Section 2 of Pub. L. 86-107 provided that: “The amendments made by section 1 [amending this section] shall have no application to any proceeding initiated before the date of enactment of this Act [July 23, 1959] under the third or fourth paragraph of section 11 of the Act entitled ‘An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes’, approved October 15, 1914 (38 Stat. 734, as amended; 15 U.S.C. 21) [this section]. Each such proceeding shall be governed by the provisions of such section as they existed on the day preceding the date of enactment of this Act.”

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21a, 57b-1 of this title.

§ 21a. Actions and proceedings pending prior to June 19, 1936; additional and continuing violations

Nothing herein contained shall affect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 13 of this title, prior to June 19, 1936: *Provided*, That where, prior to June 19, 1936, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 13 of this title, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent ju-

risdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since June 19, 1936, or is committing, using or carrying on, any act, practice or method in violation of any of the provisions of said section 13 of this title, it may reopen such original proceedings and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such supplementary complaint as provided in section 21 of this title. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed, used, or carried on since June 19, 1936, or is being committed, used or carried on, in violation of said section 13 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such person its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 21 of this title, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in said section 21 of this title the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

(June 19, 1936, ch. 592, §2, 49 Stat. 1527.)

REFERENCES IN TEXT

Nothing herein contained, referred to in text, probably means nothing contained in act June 19, 1936, ch. 592, 49 Stat. 1526, popularly known as the Robinson-Patman Antidiscrimination Act and also as the Robinson-Patman Price Discrimination Act, which enacted sections 13a, 13b, and 21a of this title and amended section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 7430; title 42 sections 6202, 8235f; title 49 section 10706.

§ 22. District in which to sue corporation

Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

(Oct. 15, 1914, ch. 323, §12, 38 Stat. 736.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

§ 23. Suits by United States; subpoenas for witnesses

In any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: *Provided*, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

(Oct. 15, 1914, ch. 323, § 13, 38 Stat. 736.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

§ 24. Liability of directors and agents of corporation

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

(Oct. 15, 1914, ch. 323, § 14, 38 Stat. 736.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

§ 25. Restraining violations; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

(Oct. 15, 1914, ch. 323, § 15, 38 Stat. 736; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted “United States attorneys” for “district attorneys of the United States”. See section 541 et seq. of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4016 of this title.

§ 26. Injunctive relief for private parties; exception; costs

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49. In any action under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney’s fee, to such plaintiff.

(Oct. 15, 1914, ch. 323, § 16, 38 Stat. 737; Pub. L. 94-435, title III, § 302(3), Sept. 30, 1976, 90 Stat. 1396; Pub. L. 104-88, title III, § 318(3), Dec. 29, 1995, 109 Stat. 949.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

AMENDMENTS

1995—Pub. L. 104-88 substituted “for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49” for “in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.”

1976—Pub. L. 94-435 inserted provision authorizing court to award costs, including attorneys’ fees, to a successful plaintiff.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 701 of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4016, 4304 of this title; title 46 App. section 1706.

§ 26a. Restrictions on the purchase of gasohol and synthetic motor fuel

(a) Limitations on the use of credit instruments; sales, resales, and transfers

Except as provided in subsection (b) of this section, it shall be unlawful for any person engaged in commerce, in the course of such commerce, directly or indirectly to impose any condition, restriction, agreement, or understanding that—

(1) limits the use of credit instruments in any transaction concerning the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which there is no similar limitation on transactions concerning such person's conventional motor fuel; or

(2) otherwise unreasonably discriminates against or unreasonably limits the sale, resale, or transfer of gasohol or other synthetic motor fuel of equivalent usability in any case in which such synthetic or conventional motor fuel is sold for use, consumption, or resale within the United States.

(b) Credit fees; equivalent conventional motor fuel sales; labeling of pumps; product liability disclaimers; advertising support; furnishing facilities

(1) Nothing in this section or in any other provision of law in effect on December 2, 1980, which is specifically applicable to the sale of petroleum products shall preclude any person referred to in subsection (a) of this section from imposing a reasonable fee for credit on the sale, resale, or transfer of the gasohol or other synthetic motor fuel referred to in subsection (a) of this section if such fee equals no more than the actual costs to such person of extending that credit.

(2) The prohibitions in this section shall not apply to any person who makes available sufficient supplies of gasohol and other synthetic motor fuels of equivalent usability to satisfy his customers' needs for such products, if the gasohol and other synthetic fuels are made available on terms and conditions which are equivalent to the terms and conditions on which such person's conventional motor fuel products are made available.

(3) Nothing in this section shall—

(A) preclude any person referred to in subsection (a) of this section from requiring reasonable labeling of pumps dispensing the gasohol or other synthetic motor fuel referred to in subsection (a) of this section to indicate, as appropriate, that such gasohol or other synthetic motor fuel is not manufactured, distributed, or sold by such person;

(B) preclude such person from issuing appropriate disclaimers of product liability for damage resulting from use of the gasohol or other synthetic motor fuel;

(C) require such person to provide advertising support for the gasohol or other synthetic motor fuel; or

(D) require such person to furnish or provide, at such person's own expense, any additional pumps, tanks, or other related facilities required for the sale of the gasohol or other synthetic motor fuel.

(c) "United States" defined

As used in this section, "United States" includes the several States, the District of Columbia, any territory of the United States, and any insular possession or other place under the jurisdiction of the United States.

(Oct. 15, 1914, ch. 323, § 26, as added Pub. L. 96-493, § 2, Dec. 2, 1980, 94 Stat. 2568.)

SHORT TITLE

For short title of Pub. L. 96-493 as the "Gasohol Competition Act of 1980", see section 1 of Pub. L. 96-493, set out as a Short Title of 1980 Amendment note under section 1 of this title.

§ 26b. Application of antitrust laws to professional major league baseball

(a) Major league baseball subject to antitrust laws

Subject to subsections (b) through (d) of this section, the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level are subject to the antitrust laws to the same extent such conduct, acts, practices, or agreements would be subject to the antitrust laws if engaged in by persons in any other professional sports business affecting interstate commerce.

(b) Limitation of section

No court shall rely on the enactment of this section as a basis for changing the application of the antitrust laws to any conduct, acts, practices, or agreements other than those set forth in subsection (a) of this section. This section does not create, permit or imply a cause of action by which to challenge under the antitrust laws, or otherwise apply the antitrust laws to, any conduct, acts, practices, or agreements that do not directly relate to or affect employment of major league baseball players to play baseball at the major league level, including but not limited to—

(1) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players;

(2) the agreement between organized professional major league baseball teams and the teams of the National Association of Professional Baseball Leagues, commonly known as the "Professional Baseball Agreement", the relationship between organized professional major league baseball and organized professional minor league baseball, or any other matter relating to organized professional baseball's minor leagues;

(3) any conduct, acts, practices, or agreements of persons engaging in, conducting or participating in the business of organized professional baseball relating to or affecting franchise expansion, location or relocation, franchise ownership issues, including ownership

transfers, the relationship between the Office of the Commissioner and franchise owners, the marketing or sales of the entertainment product of organized professional baseball and the licensing of intellectual property rights owned or held by organized professional baseball teams individually or collectively;

(4) any conduct, acts, practices, or agreements protected by Public Law 87-331 (15 U.S.C. § 1291 et seq.) (commonly known as the “Sports Broadcasting Act of 1961”);

(5) the relationship between persons in the business of organized professional baseball and umpires or other individuals who are employed in the business of organized professional baseball by such persons; or

(6) any conduct, acts, practices, or agreements of persons not in the business of organized professional major league baseball.

(c) Standing to sue

Only a major league baseball player has standing to sue under this section. For the purposes of this section, a major league baseball player is—

(1) a person who is a party to a major league player’s contract, or is playing baseball at the major league level; or

(2) a person who was a party to a major league player’s contract or playing baseball at the major league level at the time of the injury that is the subject of the complaint; or

(3) a person who has been a party to a major league player’s contract or who has played baseball at the major league level, and who claims he has been injured in his efforts to secure a subsequent major league player’s contract by an alleged violation of the antitrust laws: *Provided however*, That for the purposes of this paragraph, the alleged antitrust violation shall not include any conduct, acts, practices, or agreements of persons in the business of organized professional baseball relating to or affecting employment to play baseball at the minor league level, including any organized professional baseball amateur or first-year player draft, or any reserve clause as applied to minor league players; or

(4) a person who was a party to a major league player’s contract or who was playing baseball at the major league level at the conclusion of the last full championship season immediately preceding the expiration of the last collective bargaining agreement between persons in the business of organized professional major league baseball and the exclusive collective bargaining representative of major league baseball players.

(d) Conduct, acts, practices, or agreements subject to antitrust laws

(1) As used in this section, “person” means any entity, including an individual, partnership, corporation, trust or unincorporated association or any combination or association thereof. As used in this section, the National Association of Professional Baseball Leagues, its member leagues and the clubs of those leagues, are not “in the business of organized professional major league baseball”.

(2) In cases involving conduct, acts, practices, or agreements that directly relate to or affect

both employment of major league baseball players to play baseball at the major league level and also relate to or affect any other aspect of organized professional baseball, including but not limited to employment to play baseball at the minor league level and the other areas set forth in subsection (b) of this section, only those components, portions or aspects of such conduct, acts, practices, or agreements that directly relate to or affect employment of major league players to play baseball at the major league level may be challenged under subsection (a) of this section and then only to the extent that they directly relate to or affect employment of major league baseball players to play baseball at the major league level.

(3) As used in subsection (a) of this section, interpretation of the term “directly” shall not be governed by any interpretation of section 151 et seq. of title 29, United States Code (as amended).

(4) Nothing in this section shall be construed to affect the application to organized professional baseball of the nonstatutory labor exemption from the antitrust laws.

(5) The scope of the conduct, acts, practices, or agreements covered by subsection (b) of this section shall not be strictly or narrowly construed.

(Oct. 15, 1914, ch. 323, §27, as added Pub. L. 105-297, §3, Oct. 27, 1998, 112 Stat. 2824.)

REFERENCES IN TEXT

The antitrust laws, referred to in text, are defined in section 12 of this title.

Public Law 87-331, referred to in subsec. (b)(4), is Pub. L. 87-331, Sept. 30, 1961, 75 Stat. 732, as amended, which is classified generally to chapter 32 (§1291 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 27 of act Oct. 15, 1914, ch. 323, was renumbered section 28 and is classified to section 27 of this title.

PURPOSE

Pub. L. 105-297, §2, Oct. 27, 1998, 112 Stat. 2824, provided that: “It is the purpose of this legislation to state that major league baseball players are covered under the antitrust laws (i.e., that major league baseball players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act [enacting this section and provisions set out as a note under section 1 of this title] does not change the application of the antitrust laws in any other context or with respect to any other person or entity.”

§ 27. Effect of partial invalidity

If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Oct. 15, 1914, ch. 323, §28, formerly §26, 38 Stat. 740; renumbered §27, Pub. L. 96-493, §2, Dec. 2, 1980, 94 Stat. 2568; renumbered §28, Pub. L. 107-273, div. C, title IV, §14102(d), Nov. 2, 2002, 116 Stat. 1922.)

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

§ 27a. Transferred

CODIFICATION

Section, act Oct. 15, 1914, ch. 323, §27, as added Pub. L. 105-297, §3, Oct. 27, 1998, 112 Stat. 2824, which related to application of antitrust laws to professional major league baseball, was transferred to section 26b of this title.

§ 28. Repealed. Pub. L. 98-620, title IV, § 402(11), Nov. 8, 1984, 98 Stat. 3358

Section, acts Feb. 11, 1903, ch. 544, §1, 32 Stat. 823; June 25, 1910, ch. 428, 36 Stat. 854; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Apr. 6, 1942, ch. 210, §1, 56 Stat. 198; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Dec. 21, 1974, Pub. L. 93-528, §4, 88 Stat. 1708, related to expedition of actions by the United States involving general public importance.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 29. Appeals**(a) Court of appeals; review by Supreme Court**

Except as otherwise expressly provided by this section, in every civil action brought in any district court of the United States under the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies”, approved July 2, 1890, or any other Acts having like purpose that have been or hereafter may be enacted, in which the United States is the complainant and equitable relief is sought, any appeal from a final judgement entered in any such action shall be taken to the court of appeals pursuant to sections 1291 and 2107 of title 28. Any appeal from an interlocutory order entered in any such action shall be taken to the court of appeals pursuant to sections 1292(a)(1) and 2107 of title 28 but not otherwise. Any judgment entered by the court of appeals in any such action shall be subject to review by the Supreme Court upon a writ of certiorari as provided in section 1254(1) of title 28.

(b) Direct appeals to Supreme Court

An appeal from a final judgment pursuant to subsection (a) of this section shall lie directly to the Supreme Court, if, upon application of a party filed within fifteen days of the filing of a notice of appeal, the district judge who adjudicated the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. Such order shall be filed within thirty days after the filing of a notice of appeal. When such an order is filed, the appeal and any cross appeal shall be docketed in the time and manner prescribed by the rules of the Supreme Court. The Supreme Court shall

thereupon either (1) dispose of the appeal and any cross appeal in the same manner as any other direct appeal authorized by law, or (2) in its discretion, deny the direct appeal and remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal and any cross appeal therein had been docketed in the court of appeals in the first instance pursuant to subsection (a) of this section.

(Feb. 11, 1903, ch. 544, §2, 32 Stat. 823; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 9, 1944, ch. 239, 58 Stat. 272; June 25, 1948, ch. 646, §17, 62 Stat. 989; Pub. L. 93-528, §5, Dec. 21, 1974, 88 Stat. 1709.)

REFERENCES IN TEXT

The Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies”, approved July 2, 1890, referred to in subsec. (a), is known as the Sherman Act, and is classified to sections 1 to 7 of this title.

CODIFICATION

Section was previously set out in both this section and in section 45 of former Title 49, Transportation.

AMENDMENTS

1974—Pub. L. 93-528 substituted provisions for appeals to the court of appeals from civil actions in district courts where equitable relief is sought, review by the Supreme Court of judgments of courts of appeals, and for direct appeals to the Supreme Court of cases involving general public importance, for provisions that appeals from final judgments of district courts lie to the Supreme Court only.

1948—Act June 25, 1948, amended section generally to strike out provisions relating to time for appeal, procedure, etc. See sections 2101 and 2109 of Title 28, Judiciary and Judicial Procedure.

1944—Act June 9, 1944, provided for certification of case to circuit court of appeals when there was no quorum of Justices of the Supreme Court qualified to participate in the consideration of the case and for designation of circuit judges in the event of disqualification from hearing the case.

CHANGE OF NAME

Act Mar. 3, 1911, which transferred the powers and duties of the circuit courts to the district courts, substituted “district court” for “circuit court”.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 7 of Pub. L. 93-528 provided that: “The amendment made by section 5 of this Act [amending this section] shall not apply to an action in which a notice of appeal to the Supreme Court has been filed on or before the fifteenth day following the date of enactment of this Act [Dec. 21, 1974]. Appeal in any such action shall be taken pursuant to the provisions of section 2 of the Act of February 11, 1903 (32 Stat. 823), as amended (15 U.S.C. 29; [former] 49 U.S.C. 45) which were in effect on the day preceding the date of enactment of this Act.”

EFFECTIVE DATE OF 1948 AMENDMENT

Section 38 of act June 25, 1948, provided that the amendment made by that act is effective Sept. 1, 1948.

EFFECTIVE DATE OF 1944 AMENDMENT

The last paragraph of act June 9, 1944, provided: “This Act [this section] shall apply to every case pending before the Supreme Court of the United States on the date of its enactment [June 9, 1944].”

SHORT TITLE

Act Feb. 11, 1903, which enacted sections 28 and 29 of this title, is commonly known as the “Expediting Act”.

§ 30. Repealed. Pub. L. 107-273, div. C, title IV, § 14102(f), Nov. 2, 2002, 116 Stat. 1922

Section, act Mar. 3, 1913, ch. 114, 37 Stat. 731, provided that depositions for use in suits in equity brought under sections 1 to 7 of this title would be open to public.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 2, 2002, and applicable to cases pending on or after Nov. 2, 2002, see section 14103 of Pub. L. 107-273, set out as an Effective Date of 2002 Amendment note under section 3 of this title.

§ 31. Repealed. Pub. L. 107-273, div. C, title IV, § 14102(a), Nov. 2, 2002, 116 Stat. 1921

Section, act Aug. 24, 1912, ch. 390, §11, 37 Stat. 567, related to closure of Panama Canal to violators of anti-trust laws.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 2, 2002, and applicable only with respect to cases commenced on or after Nov. 2, 2002, see section 14103 of Pub. L. 107-273, set out as a note under section 3 of this title.

§§ 32, 33. Repealed. Pub. L. 91-452, title II, §§ 209, 210, Oct. 15, 1970, 84 Stat. 929

Section 32, act Feb. 25, 1903, ch. 755, §1, 32 Stat. 904, granted immunity from prosecution to witnesses testifying or producing evidence, documentary or otherwise, in any proceeding, suit, or prosecution under section 1 to 11 of this title. See section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Section 33, act June 30, 1906, ch. 3920, 34 Stat. 798, provided that, under the immunity provisions of former section 32 of this title, immunity was to extend only to a natural person who, in obedience to a subpoena, testified or produced evidence.

EFFECTIVE DATE OF REPEAL

Repeal effective on sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

SAVINGS PROVISION

Repeal of sections by Pub. L. 91-452 not to affect any immunity to which any individual was entitled under sections by reason of any testimony given before the sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

§ 34. Definitions applicable to sections 34 to 36

For purposes of sections 34 to 36 of this title—

(1) the term “local government” means—

(A) a city, county, parish, town, township, village, or any other general function governmental unit established by State law, or

(B) a school district, sanitary district, or any other special function governmental unit established by State law in one or more States,

(2) the term “person” has the meaning given in subsection (a) of the first section of the Clayton Act [15 U.S.C. 12(a)], but does not include any local government as defined in paragraph (1) of this section, and

(3) the term “State” has the meaning given in section 4G(2) of the Clayton Act (15 U.S.C. 15g(2)).

(Pub. L. 98-544, §2, Oct. 24, 1984, 98 Stat. 2750.)

EFFECTIVE DATE

Section 6 of Pub. L. 98-544 provided that: “This Act [enacting this section, sections 35 and 36 of this title, and provisions set out as a note under section 1 of this title] shall take effect thirty days before the date of the enactment of this Act [Oct. 24, 1984].”

§ 35. Recovery of damages, etc., for antitrust violations from any local government, or official or employee thereof acting in an official capacity

(a) Prohibition in general

No damages, interest on damages, costs, or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity.

(b) Preconditions for attachment of prohibition; prima facie evidence for nonapplication of prohibition

Subsection (a) of this section shall not apply to cases commenced before the effective date of this Act unless the defendant establishes and the court determines, in light of all the circumstances, including the stage of litigation and the availability of alternative relief under the Clayton Act, that it would be inequitable not to apply this subsection to a pending case. In consideration of this section, existence of a jury verdict, district court judgment, or any stage of litigation subsequent thereto, shall be deemed to be prima facie evidence that subsection (a) of this section shall not apply.

(Pub. L. 98-544, §3, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For the effective date of this Act, referred to in subsection (b), see Effective Date note below.

The Clayton Act, referred to in subssecs. (a) and (b), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of this title and Tables.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 34 of this title.

§ 36. Recovery of damages, etc., for antitrust violations on claim against person based on official action directed by local government, or official or employee thereof acting in an official capacity

(a) Prohibition in general

No damages, interest on damages, costs or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) in any claim against a person based on any official action directed by a local government, or official or employee thereof acting in an official capacity.

(b) Nonapplication of prohibition for cases commenced before effective date of provisions

Subsection (a) of this section shall not apply with respect to cases commenced before the effective date of this Act.

(Pub. L. 98-544, § 4, Oct. 24, 1984, 98 Stat. 2750.)

REFERENCES IN TEXT

For effective date of this Act, referred to in subsec. (b), see Effective Date note below.

EFFECTIVE DATE

Section effective thirty days before Oct. 24, 1984, see section 6 of Pub. L. 98-544, set out as a note under section 34 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 34 of this title.

§ 37. Immunity from antitrust laws

(a) Inapplicability of antitrust laws

Except as provided in subsection (d) of this section, the antitrust laws, and any State law similar to any of the antitrust laws, shall not apply to charitable gift annuities or charitable remainder trusts.

(b) Immunity

Except as provided in subsection (d) of this section, any person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of setting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implementing, or otherwise being involved in the planning, issuance, or payment of charitable gift annuities or charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsection.

(c) Treatment of certain annuities and trusts

Any annuity treated as a charitable gift annuity, or any trust treated as a charitable remainder trust, either—

- (1) in any filing by the donor with the Internal Revenue Service; or
- (2) in any schedule, form, or written document provided by or on behalf of the donee to the donor;

shall be conclusively presumed for the purposes of this section and section 37a of this title to be respectively a charitable gift annuity or a charitable remainder trust, unless there has been a final determination by the Internal Revenue Service that, for fraud or otherwise, the donor's annuity or trust did not qualify respectively as a charitable gift annuity or charitable remainder trust when created.

(d) Limitation

Subsections (a) and (b) of this section shall not apply with respect to the enforcement of a State law similar to any of the antitrust laws, with respect to charitable gift annuities, or charitable remainder trusts, created after the State enacts a statute, not later than December 8, 1998, that expressly provides that subsections (a) and (b) of this section shall not apply with respect to such charitable gift annuities and such charitable remainder trusts.

(Pub. L. 104-63, § 2, Dec. 8, 1995, 109 Stat. 687; Pub. L. 105-26, § 2(1), July 3, 1997, 111 Stat. 241.)

REFERENCES IN TEXT

For definition of "antitrust laws", referred to in text, see section 37a(1) of this title.

AMENDMENTS

1997—Pub. L. 105-26 amended section generally. Prior to amendment, section related to modification of antitrust laws to allow two or more charitable organizations to use, or to agree to use, the same annuity rate in issuing one or more charitable gift annuities and to limitations on such conduct.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 3 of Pub. L. 105-26 provided that: "This Act [see Short Title of 1997 Amendments note set out under section 1 of this title], and the amendments made by this Act, shall apply with respect to all conduct occurring before, on, or after the date of the enactment of this Act [July 3, 1997] and shall apply in all administrative and judicial actions pending on or commenced after the date of the enactment of this Act."

EFFECTIVE DATE

Section 4 of Pub. L. 104-63 provided that: "This Act [enacting this section, section 37a of this title, and provisions set out as a note under section 1 of this title] shall apply with respect to conduct occurring before, on, or after the date of the enactment of this Act [Dec. 8, 1995]."

STUDY AND REPORT

Section 4 of Pub. L. 105-26 provided that:

"(a) STUDY AND REPORT.—The Attorney General shall carry out a study to determine the effect of this Act [see Short Title of 1997 Amendments note set out under section 1 of this title] on markets for noncharitable annuities, charitable gift annuities, and charitable remainder trusts. The Attorney General shall prepare a report summarizing the results of the study.

"(b) DETAILS OF STUDY AND REPORT.—The report referred to in subsection (a) shall include any information on possible inappropriate activity resulting from this Act and any recommendations for legislative changes, including recommendations for additional enforcement resources.

"(c) SUBMISSION OF REPORT.—The Attorney General shall submit the report referred to in subsection (a) to the Chairman and the ranking member of the Committee on the Judiciary of the House of Representatives, and to the Chairman and the ranking member of the Committee on the Judiciary of the Senate, not later than 27 months after the date of the enactment of this Act [July 3, 1997]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37a of this title.

§ 37a. Definitions

For purposes of this section and section 37 of this title:

(1) Antitrust laws

The term "antitrust laws" has the meaning given it in subsection (a) of section 12 of this title, except that such term includes section 45 of this title to the extent that such section 45 applies to unfair methods of competition.

(2) Charitable remainder trust

The term "charitable remainder trust" has the meaning given it in section 664(d) of title 26.

(3) Charitable gift annuity

The term "charitable gift annuity" has the meaning given it in section 501(m)(5) of title 26.

(4) Final determination

The term “final determination” includes an Internal Revenue Service determination, after exhaustion of donor’s and donee’s administrative remedies, disallowing the donor’s charitable deduction for the year in which the initial contribution was made because of the donee’s failure to comply at such time with the requirements of section 501(m)(5) or 664(d), respectively, of title 26.

(5) Person

The term “person” has the meaning given it in subsection (a) of section 12 of this title.

(6) State

The term “State” has the meaning given it in section 15g(2) of this title.

(Pub. L. 104-63, § 3, Dec. 8, 1995, 109 Stat. 687; Pub. L. 105-26, § 2(2), July 3, 1997, 111 Stat. 242.)

AMENDMENTS

1997—Pars. (1), (2). Pub. L. 105-26, § 2(2)(A)–(C), added par. (2), redesignated former par. (2) as (1), and struck out heading and text of former par. (1). Text read as follows: “The term ‘annuity rate’ means the percentage of the fair market value of a gift (determined as of the date of the gift) given in exchange for a charitable gift annuity, that represents the amount of the annual payment to be made to 1 or 2 annuitants over the life of either or both under the terms of the agreement to give such gift in exchange for such annuity.”

Pars. (4) to (6). Pub. L. 105-26, § 2(2)(D), (E), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-26 applicable with respect to all conduct occurring before, on, or after July 3, 1997, and applicable in all administrative and judicial actions pending on or commenced after July 3, 1997, see section 3 of Pub. L. 105-26, set out as a note under section 37 of this title.

EFFECTIVE DATE

Section applicable with respect to conduct occurring before, on, or after Dec. 8, 1995, see section 4 of Pub. L. 104-63, set out as a note under section 37 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37 of this title.

CHAPTER 2—FEDERAL TRADE COMMISSION; PROMOTION OF EXPORT TRADE AND PRE- VENTION OF UNFAIR METHODS OF COM- PETITION

SUBCHAPTER I—FEDERAL TRADE COMMISSION

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